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**RULE PROPOSALS**

**LABOR AND WORKFORCE DEVELOPMENT  
WORKFORCE NEW JERSEY**

*39 N.J.R. 838(a)*

**Proposed Readoption with Amendments: *N.J.A.C. 12:42***

**Workforce Investment Act (WIA): Non-Criminal Complaint/Grievance, Hearing and Review Procedures at the Local Area, Direct Recipient, State and Federal Level**

Authorized By: David J. Socolow, Commissioner, Department of Labor and Workforce Development.

Authority: *N.J.S.A. 34:1-20, 34:1A-3(e), 29 U.S.C. §§2801 et seq.*, and *20 CFR §§667.600 et seq.*

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2007-77.

A **public hearing** on the proposed readoption with amendments will be held on the following date at the following location:

Thursday, April 12, 2007  
10:00 A.M. to 12:00 Noon  
New Jersey Department of Labor and Workforce Development  
1st Floor, Conference Room  
John Fitch Plaza  
Trenton, New Jersey

Please call the Office of Legal and Regulatory Services at (609) 292-2789 if you wish to be included on the list of speakers.

Submit written comments by May 18, 2007 to:  
David Fish, Regulatory Officer  
Office of Legal and Regulatory Services  
N.J. Department of Labor and Workforce Development  
P.O. Box 110 - 13th Floor  
Trenton, New Jersey 08625-0110  
Fax to: (609) 292-8246

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The agency proposal follows:

## Summary

Pursuant to N.J.S.A. 52:14B-5.1c, *N.J.A.C. 12:42*, which pertains to the Workforce Investment Act, 29 U.S.C. §§2801 et seq. ("the Act" or "WIA"), Non-Criminal Complaint/Grievance, Hearing and Review Procedures at the Local Area, Direct Recipient, State and Federal Levels, is scheduled to expire on August 3, 2007. The Department has reviewed these rules and, with the exception of technical amendments made throughout the chapter that reflect a change in the name of the Department from the "Department of Labor" to the "Department of Labor and Workforce Development" and a change in the name of the Division from the "Division of Employment and Training" to the "Division of One-Stop Coordination and Support," has determined them to be necessary, reasonable and proper for the purposes for which they were originally promulgated. Accordingly, the Department proposes that *N.J.A.C. 12:42* be readopted with amendments.

A summary of the sections of Subchapter 1 (the only subchapter within *N.J.A.C. 12:42*) follows:

*N.J.A.C. 12:42-1.1* sets forth the purpose of Subchapter 1, namely, to enumerate the grievance, hearing and review procedures required under the Act.

*N.J.A.C. 12:42-1.2* sets forth the scope of Subchapter 1. Specifically, it explains under which circumstances one may submit a grievance under the Act to either a local area, the Commissioner of the State Department of Labor and Workforce Development, the State Workforce Investment Board, or the Secretary of the United States Department of Labor.

*N.J.A.C. 12:42-1.3* sets forth the definitions of terms to be used throughout Subchapter 1.

*N.J.A.C. 12:42-1.4* addresses the procedural requirements for hearings at the local area level. Those with access to such hearings are participants and other interested parties affected by the local Workforce Investment System, including one-stop partners and service providers, who allege violations of the requirements of the Act and/or provisions of a related agreement(s), and individuals alleging labor standards violations under 29 U.S.C. §2931(b). See 20 CFR §667.600(b).

*N.J.A.C. 12:42-1.5* addresses the procedural requirements for the appeal of local level decisions to the State. It explains that with regard to such matters the decision of the Commissioner of the New Jersey Department of Labor and Workforce Development will constitute the final administrative determination of the State. See 20 CFR §667.600(c).

*N.J.A.C. 12:42-1.6* addresses the review procedures for matters initiated at the State level. Specifically, for matters involving those interested parties who do not have recourse to the grievance and hearing procedures of a local area and who are affected by the Statewide Workforce Investment program, those individuals may submit directly to the Commissioner of the New Jersey Department of Labor and Workforce Development any grievances or complaints alleging a violation(s) of the requirements of the Act and/or provisions of a related agreement(s). See 20 CFR §667.600(c).

*N.J.A.C. 12:42-1.7* addresses review procedures for matters before the State Workforce Investment Board. Specifically, this section sets forth procedures to be followed by the State Board when complaints are received from any unit or combination of units of general local government or a rural concentrated employment program grant recipient that requests, but is not granted, automatic or temporary and subsequent designation as a local workforce investment area. See 20 CFR §667.640(a).

*N.J.A.C. 12:42-1.8* addresses Federal review procedures regarding allegations arising through the grievance procedures described in *N.J.A.C. 12:42-1.5* and *1.6*, with the exception of grievances at the State level from complaints subject to testing and sanctioning for the use of controlled dangerous substances or from training providers denied eligibility or terminated as eligible training providers. See 20 CFR §667.610.

*N.J.A.C. 12:42-1.9* addresses review procedures for complaints of discrimination filed by participants and other interested parties. It explains that such complaints must be handled in accordance with 29 U.S.C. §2938(b), and the United States Department of Labor nondiscrimination regulations implementing that section at 29 CFR Part 37. See 20 CFR §667.600(f).

*N.J.A.C. 12:42-1.10* addresses the prohibition against discrimination by recipients against participants or any individual in connection with the administration of a WIA program because such recipient or individual has filed any complaint or instituted or caused to be instituted any proceeding under or related to this subchapter. The section explains that such complaints should be directed to the Secretary of the United States Department of Labor.

*N.J.A.C. 12:42-1.11* addresses the requirement that information about the content of the grievance and complaint procedures be provided to participants and other interested parties.

*N.J.A.C. 12:42-1.12* addresses the remedies that may be imposed under local or State grievance and hearing procedures. See *20 CFR §667.600(e)*.

As the Department has provided a 60-day comment period for this notice of proposal, this notice is excepted from the rulemaking calendar requirements, pursuant to *N.J.A.C. 1:30-3.3(a)5*.

### **Social Impact**

The rules proposed for readoption at *N.J.A.C. 12:42* and the proposed amendments would provide a process for dealing with grievances and complaints from participants and other interested parties affected by the local Workforce Investment System, including one-stop partners and service providers. The rules would also provide for an informal resolution of a grievance or complaint or, if that result cannot be achieved, binding arbitration is yet another remedy to which the parties would be able to submit after local and State grievance procedures have been exhausted. In addition, thereto, the rules proposed for readoption and the proposed amendments would offer a structured mechanism whereby an appeal could be directed to the State agency where, at a local level, no decision has been rendered on a grievance or complaint within 60 days of the filing thereof or where either party is dissatisfied with the local hearing decision. The ultimate social impact of the rules proposed for readoption and the proposed amendments would be to enhance the due process rights of those individuals who have availed themselves of training and educational opportunities under the Act by setting in place a defined structure within which to address the subject matter of a grievance or complaint. They would also provide a limited timeframe within which the foregoing would have to be acted upon and resolved. Thus, individual impediments which might otherwise obstruct the smooth flow of the administration by the local Workforce Investment Board or designated State agency, of WIA objectives will be minimized within a clearly delineated due process structure.

### **Economic Impact**

The rules proposed for readoption and the proposed amendments would have a positive economic impact upon both complainants and those entities hearing complaints, in that the rules eliminate any confusion as to the proper procedures to be followed where grievances are filed under the Act. Consequently, the rules proposed for readoption and the proposed amendments would ensure the swift and efficient resolution of such disputes, thereby also ensuring the most expeditious and appropriate allocation of funds under the Act. In terms of costs incurred by participants within the Workforce Investment System who have chosen to file a grievance or complaint pursuant to the rules proposed for readoption with amendments, those will vary. Specifically, a participant who chooses to submit his or her own documentation and represents himself or herself at a hearing on the grievance or complaint will incur minimal costs. Thus, a negative economic impact on the participant should prove to be either non-existent or minimal. However, if the participant seeks the assistance of legal counsel, then he or she will incur specific costs which would produce a more pronounced economic impact. Concomitantly, the economic impact on a service provider that might be the subject of a grievance or complaint would likewise be variable. The time that would be utilized to present the position of a service provider at a hearing or the time taken by the service provider to respond to a grievance or complaint would, as in any contested legal, quasi-legal or procedural matter, have certain cost consequences. The degree thereof will vary according to the complexity of the issues embodied in the grievance or complaint. However, the structured nature of the rules proposed for readoption with amendments would limit, both temporally and financially, the economic impact on the service provider. Likewise, actual costs of implementation of the procedures embodied in the rules proposed for readoption with amendments and the cost of utilization thereof should prove to be minimal. Structures already exist within the local Workforce Investment System and designated State agency to accommodate the procedural directives set forth within the rules proposed for readoption with amendments. Thus, while the economic impact thereof will be of a variable nature, the overall impact will be of limited scope.

### **Federal Standards Statement**

The rules proposed for readoption and the proposed amendments do not exceed standards or requirements imposed by Federal law. See *29 U.S.C. §§2801 et seq.* As a result, a Federal standards analysis is not required.

### **Jobs Impact**

The rules proposed for readoption and the proposed amendments would not result in the generation or loss of jobs in the State.

### **Agriculture Industry Impact**

The rules proposed for readoption and the proposed amendments would not have an impact on the agriculture industry of the State.

### **Regulatory Flexibility Analysis**

The rules proposed for readoption and the proposed amendments would not impose any reporting or recordkeeping requirements on small businesses as that term is defined by the Regulatory Flexibility Act, *N.J.S.A. 52:14B-16* et seq., nor would they have any substantive economic effect upon such small businesses. The rules proposed for readoption and the proposed amendments simply set forth the procedure to be followed when one files a complaint under the Act, the regulations promulgated in accordance therewith, or a related agreement(s). To the extent that a small business is the subject of a grievance or complaint filed by a participant in the Workforce Investment System, it will be required to abide by the procedural requirements and the time limitations imposed under the rules proposed for readoption with amendments. The costs, as noted in the Economic Impact above, would be variable and would be confined to those emanating from the time utilized by the small business to respond to a grievance or complaints, or the time allotted to attendance by an officer or representative of the small business at a hearing on said grievance or complaint. It is possible that a small business might seek the services of legal counsel in order to respond to a grievance or complaint filed by a participant in the Workforce Investment System. Such a determination would be purely volitional and the costs thereof would vary based upon the time invested by counsel in formulating a documentary response, attending a hearing and individualized billing factors. However, the rules proposed for readoption and the proposed amendments are designed to define and limit the scope of the grievance/complaint process thereby restricting the accumulations of costs which could otherwise accrue to all parties in a less structured and defined procedural environment. Thus, it is expected that the rules proposed for readoption and the proposed amendments will minimize costs while economizing on the time that might otherwise be expended by a small business in responding to a grievance or complaint.

### **Smart Growth Impact**

The rules proposed for readoption and the proposed amendments would not have an impact on the achievement of smart growth and the implementation of the State Development and Redevelopment Plan.

**Full text** of the rules proposed for readoption may be found in the New Jersey Administrative code at *N.J.A.C. 12:42*.

**Full text** of the proposed amendments follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

#### 12:42-1.3 Definitions

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

"Commissioner" means the Commissioner, New Jersey Department of Labor **and Workforce Development** or his or her authorized designee.

...

"Director" means the Director of the Division of [Employment and Training] **One-Stop Coordination and Support, Workforce New Jersey, New Jersey Department of Labor and Workforce Development.**

#### 12:42-1.5 Appeal of local level decisions to the State

(a) (No change.)

(b) Each appeal shall be submitted to:

New Jersey Department of Labor **and Workforce Development**  
Director, Division of [Employment and Training] **One-Stop Coordination and Support**  
Workforce New Jersey  
PO Box 055  
Trenton, New Jersey 08625-0055

(c) Along with the Notice of Appeal, the appellant shall simultaneously submit in writing the following information to the Director of the Division of [Employment and Training] **One-Stop Coordination and Support**:

1.-7. (No change.)

(d)-(f) (No change.)