

1 **CHAPTER 842. WIOA NONDISCRIMINATION AND EQUAL OPPORTUNITY**

2
3 **ADOPTED RULES WITH PREAMBLE TO BE SUBMITTED TO THE TEXAS**
4 **REGISTER. THIS DOCUMENT WILL HAVE NO SUBSTANTIVE CHANGES BUT IS**
5 **SUBJECT TO FORMATTING CHANGES AS REQUIRED BY THE TEXAS REGISTER.**
6

7 The Texas Workforce Commission (TWC) adopts new Chapter 842, relating to WIOA
8 Nondiscrimination and Equal Opportunity, comprising the following subchapter, *without*
9 changes, as published in the October 9, 2020, issue of the *Texas Register* (45 TexReg 7223):
10

11 Subchapter A. WIOA Nondiscrimination and Equal Opportunity, §§842.1 - 842.15
12

13 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**

14 The purpose of the new Chapter 842 rules is to retain and update the nondiscrimination and equal
15 opportunity rules contained in Chapter 841, Subchapter F, which are concurrently being
16 repealed. Chapter 841 included multiple rules pertaining to the federal Workforce Investment
17 Act (WIA), which was repealed and replaced by the Workforce Innovation and Opportunity Act
18 (WIOA) in 2014. New Chapter 842 establishes nondiscrimination and equal opportunity as a
19 distinct chapter of TWC rules and updates the repealed rules to comply with current federal
20 statute and regulations and TWC rules.
21

22 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**

23
24 **SUBCHAPTER A. WIOA NONDISCRIMINATION AND EQUAL OPPORTUNITY**

25 TWC adopts new Subchapter A, WIOA Nondiscrimination and Equal Opportunity, as follows:
26

27 **§842.1. Scope and Purpose**

28 New §842.1 replaces repealed §841.201 and updates provisions to change the term "Agency's
29 Methods of Administration" to "Agency's Nondiscrimination Plan," and align citations with
30 current federal statutes and regulations and TWC rules.
31

32 **§842.2. Definitions**

33 New §842.2 replaces repealed §841.202 and updates provisions to add a definition for "Babel
34 notice," change the term "MOA" (Methods of Administration) to "NDP" (Nondiscrimination
35 Plan), and align the remaining definitions with current federal statutes and regulations.
36

37 **§842.3. Assurances**

38 New §842.3 replaces repealed §841.203 and updates provisions to align citations with current
39 federal regulations.
40

41 **§842.4. EO Officers**

42 New §842.4 replaces repealed §841.204 and updates provisions to change the term "Agency EO
43 Officer" to "State-Level EO Officer" to align with language in 29 CFR §38.28(a), specify under
44 §842.4(b)(2) that monitoring is to occur annually, add that EO Officers will provide equal
45 opportunity and nondiscrimination education to recipients, and align citations with current
46 federal statutes and regulations.

1
2 **§842.5. Notice and Communication**

3 New §842.5 replaces repealed §841.205 and updates provisions to add WIOA notice and
4 communication requirements, including a "Babel notice," tagline compliance, add specific
5 requirements for posting the notice, and update citations to align with current federal regulations.
6

7 **§842.6. Data and Information Collection and Maintenance**

8 New §842.6 replaces repealed §841.206 and updates provisions to specify that the recipient shall
9 notify the State-Level EO Officer and align citations with current federal regulations.
10

11 **§842.7. Affirmative Outreach**

12 New §842.7 replaces repealed §841.207 and updates provisions to ensure that recipients provide
13 "equal" access rather than "universal" access to WIOA Title I programs, expand the list of
14 protected groups in accordance with 29 CFR §38.40, and update citations to align with current
15 federal regulations.
16

17 **§842.8. Filing Complaints of Discrimination**

18 New §842.8 replaces repealed §841.208 and updates provisions to change the term "Agency EO
19 Officer" to "EO Officer" in sections regarding complaint processing, because Local Workforce
20 Development Board (Board) EO Officers may now conduct complaint investigations. The new
21 section also updates the mailing address of the State-Level EO Officer, adds electronic and hand
22 delivery as acceptable means to submit written complaints, and updates citations to align with
23 current federal regulations.
24

25 **§842.9. Notice of Receipt of Complaint of Discrimination**

26 New §842.9 replaces repealed §841.209 and updates provisions to change the term "Agency EO
27 Officer" to "EO Officer," as discussed in the explanation of new §842.4 and §842.8.
28

29 **§842.10. Jurisdiction of Complaints of Discrimination**

30 New §842.10 replaces repealed §841.210 and updates provisions to change the term "Agency EO
31 Officer" to "EO Officer," as discussed in the explanation of new §842.4 and §842.8 and update
32 citations to align with current federal statutes and regulations.
33

34 **§842.11. Acceptance of Complaints of Discrimination**

35 New §842.11 replaces repealed §841.211 and updates provisions to change "Agency EO Officer"
36 to "EO Officer," as discussed in the explanation of new §842.4 and §842.8, include that Boards-
37 -not just TWC--may investigate or reject complaints, and update citations to align with current
38 federal regulations.
39

40 **§842.12. Alternative Dispute Resolution of Complaint of Discrimination**

41 New §842.12 replaces repealed §841.212 and updates provisions to specify that the alternative
42 dispute resolution (ADR) process shall be completed within 40 days from the date of the initial
43 written notice, change the time that Boards must file with TWC a copy of the ADR process from
44 30 days of reaching the determination to 10 days, and update citations to align with current
45 federal regulations.
46

1 **§842.13. Processing of Accepted Complaints of Discrimination**

2 New §842.13 replaces repealed §841.213 and updates provisions to change the term "Agency EO
3 Officer" to "EO Officer," as discussed in the explanation of new §842.4 and §842.8.

4
5 **§842.14. Corrective Actions and Remedies**

6 New §842.14 replaces repealed §841.214 and updates provisions to transfer imposition of
7 corrective and remedial action from TWC to the Boards, distinguish between State-Level and
8 Board EO Officers, and update citations to align with current federal regulations.

9
10 **§842.15. Sanctions**

11 New §842.15 replaces repealed §841.215 and updates provisions to clarify language and update
12 citations to align with current Texas Administrative Code.

13
14 TWC hereby certifies that the rule has been reviewed by legal counsel and found to be within
15 TWC's legal authority to adopt.

16
17 **PART III. PUBLIC COMMENT**

18 The public comment period closed on November 9, 2020. No comments were received.

19
20 **PART IV. STATUTORY AUTHORITY**

21 The new rules are adopted under Texas Labor Code, §301.0015 and §302.002(d), which provide
22 TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the
23 effective administration of TWC services and activities.

24
25 The new rules affect Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as
26 Texas Government Code, Chapter 2308.

1 **CHAPTER 842. WIOA NONDISCRIMINATION AND EQUAL OPPORTUNITY**

2
3 **SUBCHAPTER A. WIOA NONDISCRIMINATION AND EQUAL OPPORTUNITY**

4
5 **§842.1. Scope and Purpose.**

6
7 All recipients of Workforce Innovation and Opportunity Act (WIOA) funds received
8 under a contract with the Agency are responsible for meeting the nondiscrimination and
9 equal opportunity requirements included in WIOA §188 (29 USCA §3248), 29 CFR Part
10 38, the Agency's Nondiscrimination Plan (NDP), and this chapter. WIOA recipients are
11 prohibited from discriminating on the basis of race, color, religion, sex, national origin,
12 age, disability, political affiliation or belief, and, for beneficiaries only, citizenship or
13 participation in a WIOA Title I financially assisted activity.

14
15 **§842.2. Definitions.**

16
17 The following words and terms when used in this subchapter, shall have the following
18 meanings, unless the context clearly indicates otherwise.

- 19
20 (1) Babel notice--As defined by 29 CFR §38.4(i), a short notice included in a
21 document or electronic medium (for example, website, app, email) in
22 multiple languages informing the reader that the communication contains
23 vital information and explaining how to access language services to have
24 the contents of the communication provided in other languages.
- 25
26 (2) Beneficiary--An individual or individuals intended by Congress to receive aid,
27 benefits, services, or training from a recipient.
- 28
29 (3) Complainant--An individual alleging a violation of WIOA §188 (29 USCA
30 §3248) or 29 CFR Part 38.
- 31
32 (4) CRC--The Civil Rights Center of the US Department of Labor (DOL).
- 33
34 (5) EO Officer--The individual responsible for coordinating a recipient's
35 responsibilities under the nondiscrimination and equal opportunity provisions
36 of WIOA §188 (29 USCA §3248) and 29 CFR Part 38..
- 37
38 (6) NDP--The Nondiscrimination Plan developed by the Agency and described in
39 29 CFR Part 38.
- 40
41 (7) Recipient--Any entity to which financial assistance under WIOA Title I is
42 extended directly from DOL, through the governor or through another recipient
43 (including any successor, assignee, or transferee of a recipient), but excluding
44 the ultimate beneficiaries of the WIOA Title I--funded services or activities.
45 The term "recipient" includes, but is not limited to, Boards; workforce area
46 grant recipients; one-stop operators; service providers, including eligible

1 training providers; and employers that provide on-the-job training. One-stop
2 partners (Workforce Solutions Office partners) are also considered recipients to
3 the extent that they participate in the one-stop delivery system. A complete
4 definition of "recipient" can be found in 29 CFR §38.4(zz). When used in this
5 subchapter, the term "recipient" does not include the Commission or Agency.
6

7 (8) Respondent--A grant applicant or recipient (including the governor) against
8 which a complaint has been filed under the nondiscrimination and equal
9 opportunity provisions of WIOA §188 (29 USCA §3248) or 29 CFR Part 38.

10
11 (9) Service provider--As defined in 29 CFR §38.4, any operator or provider of
12 WIOA aid, benefits, services, or training when used in this subchapter, does
13 not include one-stop operators.
14

15 (10) Small recipient--A recipient that serves a total of fewer than 15 beneficiaries
16 during the entire grant year and employs fewer than 15 employees on any
17 given day during the grant year.
18

19 **§842.3. Assurances.**
20

21 (a) Recipients shall comply with the assurances requirements of 29 CFR §§38.25 -
22 38.27. All applications for financial assistance under Title I of WIOA shall include
23 the assurances required by 29 CFR §38.25. Recipients shall ensure that all contracts,
24 agreements, grants, cooperative agreements, or other arrangements under which
25 WIOA Title I funds are available shall include or incorporate by reference the
26 assurances contained in 29 CFR §38.25.
27

28 (b) Recipients shall include in any instrument effecting or recording a transfer of
29 property acquired or improved under a WIOA Title I program the covenant required
30 by 29 CFR §38.27 assuring nondiscrimination and equal opportunity.
31

32 **§842.4. EO Officers.**
33

34 (a) Each recipient, except small recipients and service providers, shall designate a
35 senior-level employee (29 CFR §38.29) to act as EO Officer and to report directly to
36 the recipient's administrative officer. The recipient's executive director shall not be
37 designated as the recipient's EO Officer.
38

39 (b) Each recipient's EO Officer shall:
40

41 (1) serve as the recipient's liaison with the State-Level EO Officer; the Board EO
42 Officer, if appropriate; and the CRC, if necessary;

43
44 (2) conduct annual monitoring and investigate the recipient's WIOA Title I--
45 funded subrecipients to ensure that the recipient and its subrecipients are not

1 violating nondiscrimination and equal opportunity provisions of WIOA §188
2 (29 USCA §3248), 29 CFR Part 38, and the state NDP;

3
4 (3) review the recipient's written policies to ensure that those policies are
5 nondiscriminatory;

6
7 (4) coordinate the recipient's compliance activities under WIOA §188 (29 USCA
8 §3248) and 29 CFR Part 38;

9
10 (5) assist complainants in completing complaint forms;

11
12 (6) be responsible for accepting discrimination complaints, and forwarding such
13 complaints to the Agency or other jurisdictional entity;

14
15 (7) conduct outreach and education about equal opportunity and nondiscrimination
16 requirements; and

17
18 (8) undergo, at the recipient's expense, nondiscrimination and equal opportunity
19 training to maintain competency when such training is required by CRC or the
20 Agency.

21
22 (c) Each recipient shall provide to the State-Level EO Officer the name, position title,
23 address, and telephone number of the individual appointed as the recipient's EO
24 Officer, as well as the job description of the position detailing the EO Officer's
25 responsibilities and the staff and resources available.

26
27 (d) Although small recipients are not required to designate EO Officers who have the
28 full range of responsibilities, each small recipient must designate an individual who
29 will be responsible for developing and publishing complaint procedures and
30 processing complaints as required by 29 CFR §§38.69 - 38.76.

31
32 **§842.5. Notice and Communication.**

33
34 (a) Each recipient shall comply with the notice and communication requirements of 29
35 CFR §§38.34 - 38.40.

36
37 (b) The notice required by 29 CFR §38.35 shall be made available to each participant
38 and made part of each participant's file. A copy of an acknowledgment of receipt of
39 notice, in a format determined by the State-Level Agency EO Officer and signed by
40 the participant, must be maintained in each participant's file. This information must
41 be communicated in appropriate languages as required by 29 CFR §38.9 and in
42 formats accessible for individuals with disabilities as required in 29 CFR §38.15.

43
44 (c) The notice shall be posted prominently, in reasonable numbers and places, in
45 physical locations and on the recipient's website.

46

- 1 (d) Each recipient shall comply with the tagline requirements of 29 CFR §38.38 for
2 recruitment brochures and other materials as described in 29 CFR §38.38.
3
4 (e) When communicating vital information to participants, recipients must incorporate a
5 Babel notice into the communication as required by 29 CFR §38.9(g)(3). The notice
6 must indicate in appropriate languages that language assistance is available free of
7 charge.
8
9 (f) For information and services accessed electronically, each recipient shall establish a
10 procedure that ensures that the notice requirements of 29 CFR Part 38 are met.
11
12 (g) Each Board shall ensure compliance with and dissemination of information
13 regarding the requirements of 29 CFR Part 38 by assuring that training regarding the
14 nondiscrimination and equal opportunity requirements of WIOA is provided to the
15 Board, the operator of the Workforce Solutions Office, other workforce area
16 recipients, and recipients' staffs.

17
18 **§842.6. Data and Information Collection and Maintenance.**
19

- 20 (a) Each recipient shall collect such data and maintain such records, in accordance with
21 the requirements of 29 CFR §§38.41 - 38.45 and the procedures prescribed by the
22 Director of CRC, as the Director finds necessary to determine whether the recipient
23 has complied or is complying with the nondiscrimination and equal opportunity
24 provisions of WIOA and 29 CFR Part 38.
25
26 (b) Each recipient shall permit access by the Agency or its designated agent during
27 normal business hours to its premises and to its employees and participants for the
28 purpose of conducting complaint investigations, compliance reviews, and monitoring
29 activities, and for inspecting and copying such books, records, accounts, and other
30 materials as may be pertinent to ascertain compliance with and ensure enforcement
31 of the nondiscrimination and equal opportunity provisions of WIOA.
32
33 (c) Each recipient shall notify the State-Level EO Officer within five business days of
34 receipt of any complaint, administrative enforcement action, or lawsuit filed against
35 the recipient alleging discrimination on the ground of race, color, religion, sex,
36 national origin, age, disability, political affiliation or belief, and, for WIOA
37 beneficiaries only, citizenship or participation in a WIOA Title I financially assisted
38 program or activity. This notification shall include:
39
40 (1) the names of the parties to the complaint, action, or lawsuit;
41
42 (2) the forum in which each case was filed; and
43
44 (3) the relevant case numbers or, if applicable, other identifying information.
45

1 (d) A recipient that is also a subrecipient of a Board shall provide the Board with the
2 same notice described in subsection (c) of this section.

3
4 (e) To enable the Agency to effectively monitor recipients' efforts to provide equal
5 access to WIOA Title I--assisted programs as provided in 29 CFR §38.41, all
6 recipient requests for proposals, proposals, and contracts shall contain information
7 regarding the proposed levels of service to different sexes, various racial and ethnic
8 groups, individuals with disabilities, and individuals in differing age groups.

9
10 **§842.7. Affirmative Outreach.**

11
12 As required in 29 CFR §38.40, recipients shall take appropriate steps to ensure that they
13 are providing equal access to WIOA Title I financially assisted programs and activities.
14 These steps must involve reasonable efforts to include the various groups protected by
15 these regulations, including, but not limited to, different sexes, various racial and
16 ethnic/national origin groups, various religions, individuals with limited English
17 proficiency, individuals with disabilities, and individuals in differing age groups. Such
18 efforts may include, but are not limited to:

19
20 (1) advertising the recipient's programs and/or activities in media, such as newspapers or
21 radio programs, that specifically target various populations;

22
23 (2) sending notices about openings in the recipient's programs and/or activities to
24 schools or community service groups that serve various populations; and

25
26 (3) consulting with appropriate community service groups about ways in which the
27 recipient may improve its outreach and service to various populations.

28
29 **§842.8. Filing Complaints of Discrimination.**

30
31 (a) Any individual who believes that they or any specific class of individuals have been
32 or is being subjected to discrimination prohibited by WIOA or 29 CFR Part 38 may
33 file a written complaint, either alone or through a representative.

34
35 (b) A complainant may file a complaint with:

36
37 (1) the local Board EO Officer;

38
39 (2) the State-Level EO Officer at: Texas Workforce Commission, 101 E. 15th
40 Street, Room 504, Austin, Texas 78778; or

41
42 (3) the Director of the Civil Rights Center at: US Department of Labor, 200
43 Constitution Ave. NW, Room N-4123, Washington, DC 20210, or the address
44 listed in 29 CFR Part 38.

1 (c) Complaints shall be filed within 180 calendar days of the alleged violation unless
2 such time limitation is waived by the Director of CRC for good cause shown.

3
4 (d) All complaints shall be submitted in writing, either electronically or in hard copy. A
5 complainant may file a complaint by:

6
7 (1) completing and submitting a CRC Complaint Information and Privacy Act
8 Consent Form;

9
10 (2) completing and submitting a Texas Workforce Commission Discrimination
11 Complaint form; or

12
13 (3) submitting a written document containing the information required by 29 CFR
14 §38.70, which includes:

15
16 (A) the complainant's name and address, or other means of contacting the
17 complainant;

18
19 (B) the identity of the respondent;

20
21 (C) a description of the complainant's allegations with sufficient detail to
22 allow the EO Officer to determine whether the Board or the Agency has
23 jurisdiction, whether the complaint was filed on time, and whether the
24 complaint has apparent merit; and

25
26 (D) the complainant's signature or the signature of the complainant's
27 representative.

28
29 (e) Both the complainant and the respondent have the right to representation by an
30 attorney or other individual of his or her choice. The Agency shall not be responsible
31 for any costs incurred by either the complainant or the respondent in obtaining
32 representation.

33
34 (f) For the purposes of this subchapter, filing with the Agency shall be deemed to have
35 occurred on the date that the written notice is received by the Agency.

36
37 **§842.9. Notice of Receipt of Complaint of Discrimination.**

38
39 The receiving EO Officer shall issue a written acknowledgment of receipt of a complaint
40 alleging discrimination by a WIOA recipient and shall include a notice of the
41 complainant's right to representation in the complaint process.

42
43 **§842.10. Jurisdiction of Complaints of Discrimination.**

1 (a) The EO Officer shall accept and investigate only those discrimination complaints
2 alleging a violation of WIOA §188 (29 USCA §3248) or 29 CFR Part 38 by a
3 respondent.

4
5 (b) If a complaint filed with the Agency alleges discrimination by a recipient on a basis
6 that is both prohibited by WIOA §188 (29 USCA §3248) and by a federal law
7 enforced by a federal grant-making agency other than DOL, and the recipient is
8 funded in whole or in part by that other federal agency, the State-Level EO Officer
9 shall refer the complaint to the other federal agency for processing under the other
10 federal agency's procedures.

11
12 (c) If the EO Officer determines that the Board or Agency does not have jurisdiction
13 over the complaint, the EO Officer shall provide written notification to the
14 complainant which includes:

15
16 (1) a statement of the reasons for the determination; and

17
18 (2) a notice that the complainant may file a complaint with CRC within 30 days of
19 the receipt of the notification.

20 21 **§842.11. Acceptance of Complaints of Discrimination.**

22
23 (a) The EO Officer shall issue to the complainant a statement of the issues raised in the
24 complaint and a statement regarding each issue of whether the Board or Agency will
25 accept the issue for investigation or reject the issue with the reasons for any
26 rejection.

27
28 (b) The statement of acceptance of issues raised in the complaint shall include a notice
29 informing the complainant that the complainant may choose to participate in an
30 alternative dispute resolution process rather than the customary process described in
31 29 CFR §38.72 and §842.13 of this subchapter (relating to Processing of Accepted
32 Complaints of Discrimination).

33 34 **§842.12. Alternative Dispute Resolution of Complaint of Discrimination.**

35
36 (a) Each Board shall establish a written alternative dispute resolution (ADR) procedure.
37 The Board EO Officer shall be responsible for implementing the ADR procedure in
38 the case of a complaint within the workforce area.

39
40 (b) A complainant within the workforce area may choose to use the Board's ADR
41 procedure rather than the complaint processing procedure described in 29 CFR
42 §38.72 and §842.13 of this subchapter (relating to Processing of Accepted
43 Complaints of Discrimination). If the complainant elects to use the Board's ADR
44 procedure, the complainant shall file notice of this election within seven calendar
45 days of the complainant's receipt of the Board's initial written notice. The ADR
46 process shall be completed within 40 days from the date of the initial written notice.

- 1
2 (c) The Board EO Officer shall coordinate the scheduling of mediation with a qualified
3 mediator at a location convenient to the complainant and respondent.
4
5 (d) The Board EO Officer shall file with the Agency a copy of the final agreement or the
6 notice of failure to reach an agreement within 10 days of reaching that determination.
7
8 (e) If the parties do not reach an agreement under the ADR process, the EO Officer shall
9 process the complaint as described in 29 CFR §38.72 and §842.13 of this subchapter.
10

11 **§842.13. Processing of Accepted Complaints of Discrimination.**
12

- 13 (a) If a complainant elects not to participate in the alternative dispute resolution (ADR)
14 process or if an agreement is not achieved through an ADR process, the EO Officer
15 shall investigate the circumstances underlying the complaint.
16
17 (b) The EO Officer shall attempt to resolve the complaint. At any point in the
18 investigation of a complaint, the complainant, respondent, or the EO Officer may
19 request that the parties attempt conciliation. The EO Officer shall act to facilitate
20 such conciliation efforts.
21
22 (c) Within 90 days of the date of receipt of the complaint, the EO Officer shall issue a
23 Notice of Final Action that shall include:
24
25 (1) for each issue raised, the decision on the issue and reasons for the decision, or
26 a description of the way the parties resolved the issue; and
27
28 (2) notice that the complainant has the right to file a complaint with CRC within
29 30 days of the date on which the Notice of Final Action is issued, if the
30 complainant is dissatisfied with the final action on the complaint.
31
32 (d) If the complainant is dissatisfied with the EO Officer's decision in the Notice of
33 Final Action, the complainant or the complainant's representative may file a
34 complaint with the Director of CRC within 30 days of the date on which the
35 complainant received the Notice of Final Action.
36

37 **§842.14. Corrective Actions and Remedies.**
38

- 39 (a) As part of the Notice of Final Action, the Board may impose any corrective or
40 remedial action, which may be imposed by the Director of CRC, under 29 CFR
41 §38.90.
42
43 (b) In addition to the corrective actions and remedies described in 29 CFR §38.90, the
44 Agency may require that the respondent complete one or more of the following:
45
46 (1) development of an appropriate equal opportunity policy;

1
2 (2) removal of any discriminatory information from the complainant's records; and

3
4 (3) delivery of equal opportunity training to all staff members.

5
6 (c) The respondent shall file a notice with the State-Level and Board EO Officers within
7 10 calendar days of receipt of the Notice of Final Action that it has accepted the
8 resolution of the complaint and that it will complete the required corrective actions
9 listed in the Notice.

10
11 (d) Monetary relief may not be paid from federal funds.

12
13 **§842.15. Sanctions.**

14
15 If the Agency finds a recipient to be in violation of the nondiscrimination and equal
16 opportunity provisions of WIOA, or such entity has not accepted a suggested resolution
17 or conciliation agreement, or has breached an established resolution or conciliation
18 agreement, sanctions may be imposed pursuant to Chapter 802, Subchapter G of this title
19 (relating to Sanctions).