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33

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  
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18  
19          **§842.2. Definitions.**

20  
21          The following words and terms when used in this subchapter, shall have the following  
22          meanings, unless the context clearly indicates otherwise.

- 23  
24          (1) Babel notice--As defined by 29 CFR §38.4(i), a short notice included in a  
25          document or electronic medium (for example, website, app, email) in  
26          multiple languages informing the reader that the communication contains  
27          vital information and explaining how to access language services to have  
28          the contents of the communication provided in other languages.
- 29  
30          (2) Beneficiary--An individual or individuals intended by Congress to receive aid,  
31          benefits, services, or training from a recipient.
- 32  
33          (3) Complainant--An individual alleging a violation of WIOA §188 (29 USCA  
34          §3248) or 29 CFR Part 38.
- 35  
36          (4) CRC--The Civil Rights Center of the US Department of Labor (DOL).
- 37  
38          (5) EO Officer--The individual responsible for coordinating a recipient's  
39          responsibilities under the nondiscrimination and equal opportunity provisions  
40          of WIOA §188 (29 USCA §3248) and 29 CFR Part 38..
- 41  
42          (6) NDP--The Nondiscrimination Plan developed by the Agency and described in  
43          29 CFR Part 38.
- 44  
45          (7) Recipient--Any entity to which financial assistance under WIOA Title I is  
46          extended directly from DOL, through the governor or through another recipient

1 (including any successor, assignee, or transferee of a recipient), but excluding  
2 the ultimate beneficiaries of the WIOA Title I--funded services or activities.  
3 The term "recipient" includes, but is not limited to, Boards; workforce area  
4 grant recipients; one-stop operators; service providers, including eligible  
5 training providers; and employers that provide on-the-job training. One-stop  
6 partners (Workforce Solutions Office partners) are also considered recipients to  
7 the extent that they participate in the one-stop delivery system. A complete  
8 definition of "recipient" can be found in 29 CFR §38.4(zz). When used in this  
9 subchapter, the term "recipient" does not include the Commission or Agency.

- 10
- 11 (8) Respondent--A grant applicant or recipient (including the governor) against  
12 which a complaint has been filed under the nondiscrimination and equal  
13 opportunity provisions of WIOA §188 (29 USCA §3248) or 29 CFR Part 38.  
14
- 15 (9) Service provider--As defined in 29 CFR §38.4, any operator or provider of  
16 WIOA aid, benefits, services, or training when used in this subchapter, does  
17 not include one-stop operators.  
18
- 19 (10) Small recipient--A recipient that serves a total of fewer than 15 beneficiaries  
20 during the entire grant year and employs fewer than 15 employees on any  
21 given day during the grant year.  
22

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26

27 **§842.3. Assurances.**

- 28
- 29 (a) Recipients shall comply with the assurances requirements of 29 CFR §§38.25 -  
30 38.27. All applications for financial assistance under Title I of WIOA shall include  
31 the assurances required by 29 CFR §38.25. Recipients shall ensure that all contracts,  
32 agreements, grants, cooperative agreements, or other arrangements under which  
33 WIOA Title I funds are available shall include or incorporate by reference the  
34 assurances contained in 29 CFR §38.25.  
35
- 36 (b) Recipients shall include in any instrument effecting or recording a transfer of  
37 property acquired or improved under a WIOA Title I program the covenant required  
38 by 29 CFR §38.27 assuring nondiscrimination and equal opportunity.  
39

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1  
2 **§842.4. EO Officers.**  
3

- 4 (a) Each recipient, except small recipients and service providers, shall designate a  
5 senior-level employee (29 CFR §38.29) to act as EO Officer and to report directly to  
6 the recipient's administrative officer. The recipient's executive director shall not be  
7 designated as the recipient's EO Officer.  
8
- 9 (b) Each recipient's EO Officer shall:
- 10 (1) serve as the recipient's liaison with the State-Level EO Officer; the Board EO  
11 Officer, if appropriate; and the CRC, if necessary;
  - 12 (2) conduct annual monitoring and investigate the recipient's WIOA Title I--  
13 funded subrecipients to ensure that the recipient and its subrecipients are not  
14 violating nondiscrimination and equal opportunity provisions of WIOA §188  
15 (29 USCA §3248), 29 CFR Part 38, and the state NDP;
  - 16 (3) review the recipient's written policies to ensure that those policies are  
17 nondiscriminatory;
  - 18 (4) coordinate the recipient's compliance activities under WIOA §188 (29 USCA  
19 §3248) and 29 CFR Part 38;
  - 20 (5) assist complainants in completing complaint forms;
  - 21 (6) be responsible for accepting discrimination complaints, and forwarding such  
22 complaints to the Agency or other jurisdictional entity;
  - 23 (7) conduct outreach and education about equal opportunity and nondiscrimination  
24 requirements; and
  - 25 (8) undergo, at the recipient's expense, nondiscrimination and equal opportunity  
26 training to maintain competency when such training is required by CRC or the  
27 Agency.
- 28 (c) Each recipient shall provide to the State-Level EO Officer the name, position title,  
29 address, and telephone number of the individual appointed as the recipient's EO  
30 Officer, as well as the job description of the position detailing the EO Officer's  
31 responsibilities and the staff and resources available.  
32
- 33 (d) Although small recipients are not required to designate EO Officers who have the  
34 full range of responsibilities, each small recipient must designate an individual who  
35  
36  
37  
38  
39  
40  
41  
42  
43

1 will be responsible for developing and publishing complaint procedures and  
2 processing complaints as required by 29 CFR §§38.69 - 38.76.

3  
4 *The provisions of this §842.4 adopted to be effective January 4, 2021, 46 TexReg 202*

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7  
8 **§842.5. Notice and Communication.**

- 9  
10 (a) Each recipient shall comply with the notice and communication requirements of 29  
11 CFR §§38.34 - 38.40.  
12  
13 (b) The notice required by 29 CFR §38.35 shall be made available to each participant  
14 and made part of each participant's file. A copy of an acknowledgment of receipt of  
15 notice, in a format determined by the State-Level Agency EO Officer and signed by  
16 the participant, must be maintained in each participant's file. This information must  
17 be communicated in appropriate languages as required by 29 CFR §38.9 and in  
18 formats accessible for individuals with disabilities as required in 29 CFR §38.15.  
19  
20 (c) The notice shall be posted prominently, in reasonable numbers and places, in  
21 physical locations and on the recipient's website.  
22  
23 (d) Each recipient shall comply with the tagline requirements of 29 CFR §38.38 for  
24 recruitment brochures and other materials as described in 29 CFR §38.38.  
25  
26 (e) When communicating vital information to participants, recipients must incorporate a  
27 Babel notice into the communication as required by 29 CFR §38.9(g)(3). The notice  
28 must indicate in appropriate languages that language assistance is available free of  
29 charge.  
30  
31 (f) For information and services accessed electronically, each recipient shall establish a  
32 procedure that ensures that the notice requirements of 29 CFR Part 38 are met.  
33  
34 (g) Each Board shall ensure compliance with and dissemination of information  
35 regarding the requirements of 29 CFR Part 38 by assuring that training regarding the  
36 nondiscrimination and equal opportunity requirements of WIOA is provided to the  
37 Board, the operator of the Workforce Solutions Office, other workforce area  
38 recipients, and recipients' staffs.  
39

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1       **§842.6. Data and Information Collection and Maintenance.**  
2

- 3       (a) Each recipient shall collect such data and maintain such records, in accordance with  
4       the requirements of 29 CFR §§38.41 - 38.45 and the procedures prescribed by the  
5       Director of CRC, as the Director finds necessary to determine whether the recipient  
6       has complied or is complying with the nondiscrimination and equal opportunity  
7       provisions of WIOA and 29 CFR Part 38.  
8
- 9       (b) Each recipient shall permit access by the Agency or its designated agent during  
10       normal business hours to its premises and to its employees and participants for the  
11       purpose of conducting complaint investigations, compliance reviews, and monitoring  
12       activities, and for inspecting and copying such books, records, accounts, and other  
13       materials as may be pertinent to ascertain compliance with and ensure enforcement  
14       of the nondiscrimination and equal opportunity provisions of WIOA.  
15
- 16       (c) Each recipient shall notify the State-Level EO Officer within five business days of  
17       receipt of any complaint, administrative enforcement action, or lawsuit filed against  
18       the recipient alleging discrimination on the ground of race, color, religion, sex,  
19       national origin, age, disability, political affiliation or belief, and, for WIOA  
20       beneficiaries only, citizenship or participation in a WIOA Title I financially assisted  
21       program or activity. This notification shall include:  
22
- 23               (1) the names of the parties to the complaint, action, or lawsuit;  
24
- 25               (2) the forum in which each case was filed; and  
26
- 27               (3) the relevant case numbers or, if applicable, other identifying information.  
28
- 29       (d) A recipient that is also a subrecipient of a Board shall provide the Board with the  
30       same notice described in subsection (c) of this section.  
31
- 32       (e) To enable the Agency to effectively monitor recipients' efforts to provide equal  
33       access to WIOA Title I--assisted programs as provided in 29 CFR §38.41, all  
34       recipient requests for proposals, proposals, and contracts shall contain information  
35       regarding the proposed levels of service to different sexes, various racial and ethnic  
36       groups, individuals with disabilities, and individuals in differing age groups.  
37

38       *The provisions of this §842.6 adopted to be effective January 4, 2021, 46 TexReg 202*  
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42       **§842.7. Affirmative Outreach.**  
43

44       As required in 29 CFR §38.40, recipients shall take appropriate steps to ensure that they  
45       are providing equal access to WIOA Title I financially assisted programs and activities.  
46       These steps must involve reasonable efforts to include the various groups protected by

1 these regulations, including, but not limited to, different sexes, various racial and  
2 ethnic/national origin groups, various religions, individuals with limited English  
3 proficiency, individuals with disabilities, and individuals in differing age groups. Such  
4 efforts may include, but are not limited to:

- 5
- 6 (1) advertising the recipient's programs and/or activities in media, such as newspapers or  
7 radio programs, that specifically target various populations;
  - 8
  - 9 (2) sending notices about openings in the recipient's programs and/or activities to  
10 schools or community service groups that serve various populations; and
  - 11
  - 12 (3) consulting with appropriate community service groups about ways in which the  
13 recipient may improve its outreach and service to various populations.
  - 14

15 *The provisions of this §842.7 adopted to be effective January 4, 2021, 46 TexReg 202*

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18  
19 **§842.8. Filing Complaints of Discrimination.**

- 20
- 21 (a) Any individual who believes that they or any specific class of individuals have been  
22 or is being subjected to discrimination prohibited by WIOA or 29 CFR Part 38 may  
23 file a written complaint, either alone or through a representative.
  - 24
  - 25 (b) A complainant may file a complaint with:
    - 26
    - 27 (1) the local Board EO Officer;
    - 28
    - 29 (2) the State-Level EO Officer at: Texas Workforce Commission, 101 E. 15th  
30 Street, Room 504, Austin, Texas 78778; or
    - 31
    - 32 (3) the Director of the Civil Rights Center at: US Department of Labor, 200  
33 Constitution Ave. NW, Room N-4123, Washington, DC 20210, or the address  
34 listed in 29 CFR Part 38.
    - 35
  - 36 (c) Complaints shall be filed within 180 calendar days of the alleged violation unless  
37 such time limitation is waived by the Director of CRC for good cause shown.
  - 38
  - 39 (d) All complaints shall be submitted in writing, either electronically or in hard copy. A  
40 complainant may file a complaint by:
    - 41
    - 42 (1) completing and submitting a CRC Complaint Information and Privacy Act  
43 Consent Form;
    - 44
    - 45 (2) completing and submitting a Texas Workforce Commission Discrimination  
46 Complaint form; or

- 1  
2 (3) submitting a written document containing the information required by 29 CFR  
3 §38.70, which includes:  
4  
5 (A) the complainant's name and address, or other means of contacting the  
6 complainant;  
7  
8 (B) the identity of the respondent;  
9  
10 (C) a description of the complainant's allegations with sufficient detail to  
11 allow the EO Officer to determine whether the Board or the Agency has  
12 jurisdiction, whether the complaint was filed on time, and whether the  
13 complaint has apparent merit; and  
14  
15 (D) the complainant's signature or the signature of the complainant's  
16 representative.  
17  
18 (e) Both the complainant and the respondent have the right to representation by an  
19 attorney or other individual of his or her choice. The Agency shall not be responsible  
20 for any costs incurred by either the complainant or the respondent in obtaining  
21 representation.  
22  
23 (f) For the purposes of this subchapter, filing with the Agency shall be deemed to have  
24 occurred on the date that the written notice is received by the Agency.  
25

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30 **§842.9. Notice of Receipt of Complaint of Discrimination.**  
31

32 The receiving EO Officer shall issue a written acknowledgment of receipt of a complaint  
33 alleging discrimination by a WIOA recipient and shall include a notice of the  
34 complainant's right to representation in the complaint process.  
35

36 *The provisions of this §842.9 adopted to be effective January 4, 2021, 46 TexReg 202*  
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39

40 **§842.10. Jurisdiction of Complaints of Discrimination.**  
41

- 42 (a) The EO Officer shall accept and investigate only those discrimination complaints  
43 alleging a violation of WIOA §188 (29 USCA §3248) or 29 CFR Part 38 by a  
44 respondent.  
45



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

7  
8 (c) If the EO Officer determines that the Board or Agency does not have jurisdiction  
9 over the complaint, the EO Officer shall provide written notification to the  
10 complainant which includes:

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

12 (2) a notice that the complainant may file a complaint with CRC within 30 days of  
13 the receipt of the notification.  
14  
15

16  
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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 *The provisions of this §842.11 adopted to be effective January 4, 2021, 46 TexReg 202*

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37  
38 **§842.12. Alternative Dispute Resolution of Complaint of Discrimination.**

39  
40 (a) Each Board shall establish a written alternative dispute resolution (ADR) procedure.  
41 The Board EO Officer shall be responsible for implementing the ADR procedure in  
42 the case of a complaint within the workforce area.

43  
44 (b) A complainant within the workforce area may choose to use the Board's ADR  
45 procedure rather than the complaint processing procedure described in 29 CFR  
46 §38.72 and §842.13 of this subchapter (relating to Processing of Accepted

1 Complaints of Discrimination). If the complainant elects to use the Board's ADR  
2 procedure, the complainant shall file notice of this election within seven calendar  
3 days of the complainant's receipt of the Board's initial written notice. The ADR  
4 process shall be completed within 40 days from the date of the initial written notice.  
5

6 (c) The Board EO Officer shall coordinate the scheduling of mediation with a qualified  
7 mediator at a location convenient to the complainant and respondent.  
8

9 (d) The Board EO Officer shall file with the Agency a copy of the final agreement or the  
10 notice of failure to reach an agreement within 10 days of reaching that determination.  
11

12 (e) If the parties do not reach an agreement under the ADR process, the EO Officer shall  
13 process the complaint as described in 29 CFR §38.72 and §842.13 of this subchapter.  
14

15 *The provisions of this §842.12 adopted to be effective January 4, 2021, 46 TexReg 202*

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18  
19 **§842.13. Processing of Accepted Complaints of Discrimination.**  
20

21 (a) If a complainant elects not to participate in the alternative dispute resolution (ADR)  
22 process or if an agreement is not achieved through an ADR process, the EO Officer  
23 shall investigate the circumstances underlying the complaint.  
24

25 (b) The EO Officer shall attempt to resolve the complaint. At any point in the  
26 investigation of a complaint, the complainant, respondent, or the EO Officer may  
27 request that the parties attempt conciliation. The EO Officer shall act to facilitate  
28 such conciliation efforts.  
29

30 (c) Within 90 days of the date of receipt of the complaint, the EO Officer shall issue a  
31 Notice of Final Action that shall include:  
32

33 (1) for each issue raised, the decision on the issue and reasons for the decision, or  
34 a description of the way the parties resolved the issue; and  
35

36 (2) notice that the complainant has the right to file a complaint with CRC within  
37 30 days of the date on which the Notice of Final Action is issued, if the  
38 complainant is dissatisfied with the final action on the complaint.  
39

40 (d) If the complainant is dissatisfied with the EO Officer's decision in the Notice of  
41 Final Action, the complainant or the complainant's representative may file a

1 complaint with the Director of CRC within 30 days of the date on which the  
2 complainant received the Notice of Final Action.

3  
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7  
8 **§842.14. Corrective Actions and Remedies.**

- 9  
10 (a) As part of the Notice of Final Action, the Board may impose any corrective or  
11 remedial action, which may be imposed by the Director of CRC, under 29 CFR  
12 §38.90.  
13  
14 (b) In addition to the corrective actions and remedies described in 29 CFR §38.90, the  
15 Agency may require that the respondent complete one or more of the following:  
16  
17 (1) development of an appropriate equal opportunity policy;  
18  
19 (2) removal of any discriminatory information from the complainant's records; and  
20  
21 (3) delivery of equal opportunity training to all staff members.  
22  
23 (c) The respondent shall file a notice with the State-Level and Board EO Officers within  
24 10 calendar days of receipt of the Notice of Final Action that it has accepted the  
25 resolution of the complaint and that it will complete the required corrective actions  
26 listed in the Notice.  
27  
28 (d) Monetary relief may not be paid from federal funds.

29  
30 *The provisions of this §842.14 adopted to be effective January 4, 2021, 46 TexReg 202*

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33  
34 **§842.15. Sanctions.**

35  
36 If the Agency finds a recipient to be in violation of the nondiscrimination and equal  
37 opportunity provisions of WIOA, or such entity has not accepted a suggested resolution  
38 or conciliation agreement, or has breached an established resolution or conciliation  
39 agreement, sanctions may be imposed pursuant to Chapter 802, Subchapter G of this title  
40 (relating to Sanctions).

41  
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