



# Combined Nondiscrimination Plan

Implementing Section 188 of the  
Workforce Innovation and Opportunity Act

Submission for 2022

Greg Abbott, Governor of Texas  
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Equal Opportunity Employer/Program. Auxiliary aids and services are available upon request to individuals with disabilities and to people with limited English proficiency.

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# The State of Texas

## Combined Nondiscrimination Plan for Equal Opportunity

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# Definitions

For purposes of this Nondiscrimination Plan (NDP), the following definitions apply:

**Aid, Benefit, Service, or Training** - WIOA Title I-financially assisted services, financial or other aid, training, or benefits provided by or through a recipient or its employees, or by others through contract or other arrangements with the recipient. "Aid, benefit, service, or training" includes, but is not limited to: (1) career services; (2) education or training; (3) health, welfare, housing, social service, rehabilitation, or other supportive services; (4) work opportunities; and (5) cash, loans, or other financial assistance to individuals.

**Agency** – means the Texas Workforce Commission.

**Applicant** - a person who submits personal information in response to a request for such information to receive benefits or services under the Workforce Innovation and Opportunity Act (WIOA).

**Applicant for Employment** - the person(s) who apply(ies) for employment with a recipient of federal financial assistance under WIOA Title I.

**Auditable Facility** - a facility that receives federal funds and is required to comply with WIOA Section 188 and 29 CFR 38.

**Babel Notice** - a short notice included in a document or electronic medium (e.g., website, "app," email) in multiple languages informing the reader that the communication contains vital information, and explaining how to access language services to have the contents of the communication provided in other languages.

**Beneficiary** - a person intended by Congress to receive WIOA Title I-financially assisted aid, benefits, services, or training.

**Board** – refers to a local workforce development board.

**Complainant** - a person alleging a violation of Section 188 of the WIOA or 29 CFR Part 38.

**Combined State Plan** – the 2020-2023 Combined State Plan Two-Year Modification, prepared pursuant to the requirements of WIOA and submitted to The US Department of Labor and the US Department of Education in June 2022.

**Core Program** - a program authorized under a core program provision.

**Core Program Provision** - youth workforce investment activities and adult and dislocated worker employment and training activities under Title I, Subtitle B, Chapters 2 and 3; adult education and literacy activities under Title II; Wagner-Peyser Act employment services authorized under sections 1 through 13; and vocational rehabilitation services under Title I of the Rehabilitation Act of 1973, other than Section 112 or part C of that title.

**Civil Rights Center (CRC)** - the department designated within the U.S. Department of Labor (DOL) that enforces various federal statutes and regulations which (1) prohibit discrimination within DOL funded programs and/or activities; (2) prohibit discrimination on the basis of disability by certain public entities and in DOL conducted activities; and (3) prohibit discrimination within DOL itself.

**Disability** - (1) General. The term “disability” means, with respect to an individual: a physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment. (2) The definition of disability must be construed in favor of broad coverage of individuals, to the maximum extent permitted by the Americans with Disability Act, federal disability nondiscrimination law, and 29 CFR Part 38.

**Eligible Applicant** - an applicant who has been determined eligible to participate in one or more titles under WIOA.

**Entity** - any person, corporation, partnership, joint venture, sole proprietorship, unincorporated association, consortium, Native American tribe or tribal organization, Native Hawaiian organization, and/or entity authorized by State or local law; any State or local government; and/or any agency, instrumentality or subdivision of such a government.

**EO** – is Equal Opportunity.

**EO Compliance Department** - a unit within FDCM led by the State-Level

EO Officer, and with responsibility to implement the provisions of both WIOA Section 188 and 29 CFR 38, to provide technical assistance and training to all parties about those requirements, to monitor compliance by TWC, local boards and other recipients, to receive and process complaints, and to take other necessary steps to accomplish those requirements.

**Facility** - all or any portion of buildings, structures, and equipment, including indoor constructs such as office cubicles and computer kiosks; roads, walks, passageways, parking lots, rolling stock or other conveyances, or other real or personal property or interest in such property, including the site where the building, property, structure or equipment is located.

**FDCM** – an acronym for TWC’s Division of Fraud Deterrence and Compliance Monitoring.

**Fraud Deterrence and Compliance Monitoring (FDCM)** - a new TWC Division that took over the functions of the prior Regulatory Integrity Division. The EO Compliance Department is housed within FDCM.

**Fundamental alteration** - (1) a change in the essential nature of a program or activity, including but not limited to an aid, service, benefit, or training; or (2) a cost that a recipient can demonstrate would result in an undue burden.

**Governor** - the chief elected official of a State or the Governor’s designee.

**I|3** – acronym for the TWC Division of Information, Innovation and Insight.

**Individual with a Disability** - a person who has a disability as previously defined above.

**Individual Training Account** - the funding allocated to pay for training costs defined by a participant’s individual training plan. This account allows a participant to select the skill-training venue that best suits the personal needs of the individual.

**Information, Innovation and Insight (I|3)** – the new TWC division which took over the functions of the prior Division of Operational Insight. Among other responsibilities, I|3 provides data analysis and reporting.

**Limited English Proficient (LEP) Individual** - an individual whose primary language for communication is not English and who has a limited



ability to read, speak, write, and/or understand English. LEP individuals may be competent in English for certain types of communication (e.g., speaking or understanding), but still be LEP for other purposes (e.g., reading or writing).

**Local-Level EO Officer** - an individual responsible for coordinating the local-level recipient's responsibilities under the nondiscrimination and equal opportunity provisions of WIOA Section 188, 29 CFR Part 38, and the state's NDP.

**Local Workforce Development Board (LWDB) (Board)** - the entities established under Section 107 of the WIOA and Subchapter F, Chapter 2308, Texas Government Code, that set policy for the local workforce development system. The term describes the 28 entities that receive WIOA Title I financial assistance from the Texas Workforce Commission (TWC).

**Local Workforce Development Area (LWDA)** – the regions, counties, and areas within a Board’s jurisdiction.

**Nondiscrimination Plan (NDP)** – the written document and supporting documentation developed under 29 CFR 38.54 that is a written assurance giving a “reasonable guarantee” that the recipient complies, and will comply, with the nondiscrimination and equal opportunity provisions of WIOA Section 188.

**Non-compliance** – failure of a grant applicant or recipient to comply with any of the applicable requirements of the nondiscrimination and equal opportunity provisions of WIOA and 29 CFR Part 38.

**One-Stop Center** - a site described in section 121(e)(2) of the Act; that is, a physical center in a local area that makes available each of the programs, services, and activities carried out by one-stop partners. Typically referred to as Workforce Solutions offices, these are equivalent to what are called “American Job Centers” in other regions of the country.

**One-Stop Partner** - an entity which carries out a workforce investment, educational, or other human resources program or activity, and which participates in the operation of the One-Stop Service Delivery Network in a local workforce development area (LWDA) consistent with the terms of the memorandum of understanding entered into between the entity and the

Local Workforce Development Board.

**One-Stop Service Delivery Network** - a system where information about and access to a wide array of job training, education, and employment services is available for customers at a single neighborhood location.

**Participant/customer** – a person who has been determined to be eligible to participate in, and who is receiving any aid, benefit, service or training under a program or activity financially assisted in whole or in part under Title I of WIOA.

**Programmatic accessibility** - policies, practices, and procedures providing effective and meaningful opportunity for persons with disabilities to participate in or benefit from aid, benefits, services, and training.

**Prohibited basis** - any basis upon which it is illegal to discriminate under the nondiscrimination and equal opportunity provisions of WIOA or this part, i.e., race, color, religion, sex, national origin, age, disability, political affiliation or belief, and, for beneficiaries only, citizenship status or participation in a WIOA Title I financially assisted program or activity.

**Qualified individual with a disability** - (1) with respect to employment, an individual who satisfies the necessary skill, experience, education, and other job-related requirements of the position and who can, with or without reasonable accommodation, perform the essential functions of the position; (2) with respect to aid, benefits, services, or training, an individual who, with or without auxiliary aids and services, reasonable accommodations, and/or modifications in policies, practices and procedures, meets the essential eligibility requirements for the receipt of said aid, benefits, services, or training.

**Reasonable Accommodation** - (1) modifications or adjustments to an application/registration process that enables a qualified applicant/registrant with a disability to be considered for desired aid, benefits, services, training, or employment; or (2) modifications or adjustments that enable a qualified individual with a disability to perform the essential functions of a job, or to receive aid, benefits, services, or training equal to that provided to qualified individuals without disabilities.

**Recipient** - any entity to which financial assistance under WIOA Title I is

extended, either directly from DOL or through the Governor or another recipient (including any successor, assignee, or transferee of a recipient), but excluding the ultimate beneficiaries of the WIOA Title I-financially assisted programs and/or activities. The term recipient includes, but is not limited to, TWC, LWDBs, workforce area grant recipients, one-stop operators, service providers (including eligible training providers), and on-the-job and training employers. Workforce center partners are also considered recipients to the extent that they participate in the One-Stop Service Delivery Network.

**Respondent** - a recipient receiving WIOA Title I financial assistance directly or indirectly from the state or the federal government against which a complaint has been filed alleging a violation of Section 188 of the WIOA or 29 CFR 38.

**Section 504** - Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, as amended, which forbids discrimination against qualified individuals with disabilities in federally-financed and conducted programs and activities.

**Service Animal** - any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of this definition.

**State-Level EO Officer** - a person responsible for coordinating the state's responsibilities under the nondiscrimination and equal opportunity provisions of Section 188 of the WIOA and 29 CFR 38.

**Subrecipient/Service Provider** - (1) any operator of, or provider of aid, benefits, services, or training to: (a) a program or activity that receives WIOA Title I financial assistance from or through any state or LWDB recipient; or (b) any participant through that participant's Individual Training Account (ITA); (2) any entity that is selected and/or certified as an eligible provider of training services to participants.

**Technical Assistance Bulletin** - refers to informal written guidance from TWC to local boards (usually giving a number or a title, such as: TA 225, *Customers Requiring Relay Services*). See also, WD Letter.

**Texas Workforce Commission (TWC)** - the entity that administers federal and state workforce development programs, including WIOA and the Unemployment Insurance program, ensuring accountability for funds and performance. TWC is responsible and accountable to the Governor, the Texas Legislature, and federal oversight bodies for these programs.

**Terminee** - a participant whose participation in the program or employee whose employment with the program ends, voluntarily or involuntarily, during the applicable program year.

**Title VI** - Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, et seq., as amended, which forbids recipients of Federal financial assistance from discriminating on the basis of race, color, or national origin.

**Undue Hardship** – In general, “undue hardship” means significant difficulty or expense incurred by a recipient, when considered in light of the following factors: (1) the nature and net cost of the accommodation needed, taking into consideration the availability of tax credits and deductions, and/or outside funding, for the accommodation; and (2) the overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation.

**Vocational Rehabilitation (VR)** – TWC programs that assists individuals with disabilities prepare for, find or retain employment and assists youth and students prepare for post-secondary opportunities. The programs also assist businesses and employers recruit, retain and accommodate employees with disabilities. TWC VR provides services for people with physical or cognitive disabilities, including blindness or visual impairment.

**VR Liaison** – an individual designated at a local Vocational Rehabilitation office to assist complainants with filling out forms and recording their complaints in writing.

**Workforce Solutions** – the unified brand identity of the workforce system in Texas across all 28 Board areas, and the brand of the Texas One Stop Centers.

**WD (or WD Letter)** – refers to a Workforce Development Letter and includes an identification number and may include a subject as well (for example: WD 02-19, *Babel Notices*). WD Letters are formal written directives from the Agency to Local Workforce Development Boards. WD

Letters specify which aspects are mandatory and which allow for local discretion. See also, Technical Assistance Bulletin.

**WIOA** – the Workforce Investment and Opportunity Act.

**WIOA Title I-financially assisted program or activity-** (1) a program or activity operated by a recipient and financially assisted, in whole or in part, under Title I of WIOA that provides either (i) any aid, benefit, service or training to individuals; or (ii) facilities for furnishing any aid, benefits, services or training to individuals; (2) aid, benefit, service or training provided in facilities that are being or were constructed with the aid of federal financial assistance under WIOA Title I; or (3) aid, benefit, service or training provided with the aid of any non-WIOA Title I-financial assistance, property, or other resources that are required to be expended or made available in order for the program to meet matching requirements or other conditions which must be met in order to receive the WIOA Title I financial assistance.

# Purpose and General Provisions

This Nondiscrimination Plan (NDP) has general applicability to all recipients as defined in 29 CFR 38.4(zz). This includes any entity to which financial assistance under Title I of WIOA is extended, directly from DOL or through the Governor or another recipient (including any successor, assignee, or transferee of a recipient). For purposes of this NDP and the guiding regulations in 29 CFR Part 38, one-stop partners, as defined in Section 121(b) of WIOA, are treated as "recipients," and are subject to these nondiscrimination and equal opportunity requirements to the extent that they participate in the one-stop delivery system.

A 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.

The One-Stop Service Delivery network includes required workforce center partners and voluntary partners. These partners, subject to adherence to this NDP and 29 CFR 38, include but are not limited to: (1) programs authorized under WIOA Title I, including those for adults, dislocated workers, and youths; Job Corps services for youth; Native American programs; and Migrant and Seasonal Farmworker employment services; (2) Wagner-Peyser employment services; (3) Adult Education and Literacy services; (4) Vocational Rehabilitation program services; (5) Senior Community Service Employment Program; (6) postsecondary vocational education and training activities; apprenticeship training; and non-certificate, postsecondary career and technology training; (7) Trade Adjustment Assistance (TAA) Program; (8) veterans resource and referral services and veterans' employment services; (9) U.S. Department of Housing and Urban Development employment and training services; (10) Unemployment Insurance; (11) Supplemental Nutrition Assistance Program (SNAP) employment and training services; (12) National and Community Services Act Program activities; (13) Temporary Assistance for Needy Families – Choices services; and (14) subsidized child care services.

Implementing regulations published at 29 CFR Part 38 contain the nondiscrimination and equal opportunity provisions of the Workforce Innovation and Opportunity Act and generally codify and consolidate requirements under the nondiscrimination and equal opportunity provisions of other federal laws and regulations. They include but are not limited to Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973, as amended; the Americans with Disabilities Act (ADA) of 1990, as amended; the Age Discrimination Act of 1975, as amended; and Title IX of the Education Amendments of 1972, as amended. Title 29 CFR 38 applies to all WIOA Title I-financially assisted programs and/or activities and prohibits discrimination against individuals on the basis of race, color, religion, sex, national origin, age, disability, political affiliation or belief. Additionally, recipients must not discriminate against beneficiaries either on the basis of citizenship/status as a lawfully admitted immigrant authorized to work in the United States or his or her participation in any WIOA Title I-financially assisted programs and/or activities.

Pursuant to 29 CFR 38.55(a) the Governor of each state is required to develop and implement an NDP or Nondiscrimination Plan, which describes the methods by which each state and its recipients give a

"reasonable guarantee" that required systems and policies are carried out reflecting actual and continuing nondiscrimination and equal opportunity practices. Each Governor then submits to the Director of the U.S. Department of Labor's Civil Rights Center (CRC) a copy of that state's NDP within 180 days from the date the state becomes subject to Section 188 of the WIOA and 29 CFR 38. Title 29 CFR 38.55 also requires the Governor of each state to update the NDP as necessary; or at least every biennium, regardless of change; and provide written notification of this update to the CRC.

The TWC Equal Opportunity Compliance Department regularly reviews the adequacy of the NDP to determine compliance with the requirements. When the NDP is either updated and/or amended, the State-Level EO Officer presents the update and/or amendment to the Governor or the Governor's designee for approval and then notifies the CRC. The CRC may review the NDP during a compliance review or at any other time.

As stated in 29 CFR 38.54, the NDP is organized into eight (8) sections, with both a written narrative and documentation to support each element. Please note that the numbering, topic names and sequence are taken directly from 29 CFR §38.54(c)(1). The sections are described as follows:

<b>Sections</b>	<b>Implementing Regulations</b>
(i) Assurances	29 CFR 38.25 through 29 CFR 38.27
(ii) Equal Opportunity Officers	29 CFR 38.28 through 29 CFR 38.33
(iii) Notice and Communication	29 CFR 38.34 through 29 CFR 38.39
(iv) Data and Information Collection and Maintenance	29 CFR 38.41 through 29 CFR 38.45
(v) Affirmative Outreach	29 CFR 38.40
(vi) Governor's Oversight Responsibility Regarding Recipients' Recordkeeping	29 CFR 38.53
(vii) Complaint Processing Procedures	29 CFR 38.72 and 29 CFR 38.73
(viii) Governor's Oversight and Monitoring Responsibilities for State Programs	29 CFR 38.51 through 29 CFR 38.53



Entities Covered	Protected Basis	Administration and Enforcement
<ul style="list-style-type: none"> <li>• Texas Workforce Commission</li> <li>• Local Workforce Development Boards</li> <li>• Service Providers</li> <li>• Workforce center partners to the extent that they participate in the One-Stop Service Delivery Network</li> <li>• Any other entity meeting the definition of recipient as defined in 29 CFR 38.4(zz).</li> </ul>	<ul style="list-style-type: none"> <li>• Race</li> <li>• Color</li> <li>• Religion</li> <li>• Sex</li> <li>• National Origin</li> <li>• Age</li> <li>• Disability</li> <li>• Political Affiliation or Belief</li> <li>• Beneficiaries on the basis of either citizenship/status as a lawfully admitted immigrant authorized to work in the United States or</li> <li>• Participation in any WIOA Title I- financially assisted programs and/or activities</li> </ul>	<ul style="list-style-type: none"> <li>• Local Workforce Development Boards</li> <li>• Texas Workforce Commission</li> <li>• Department of Labor-Civil Rights Center</li> </ul>

Note that this is a combined Nondiscrimination Plan under 29 CFR §38.54 because Texas has a single state workforce agency which handles both unemployment insurance and WIOA Title 1-financially assisted programs.

Some factors impact most or all of TWC’s Nondiscrimination Plan (“NDP”) and, therefore, are dealt with here in the section on General Provisions.

New case management systems. TWC is at the front end of a multi-year process to replace system software in the UI, Workforce and subsidized childcare program areas. This is a large, difficult, complex effort but one which will benefit our customers for years to come. The new case management software will support and comply with all portions of the NDP.

Agency reorganization. On September 1, 2021, TWC had a significant reorganization of the agency’s structure. The reorganization impacted a substantial portion of TWC’s functions. In the new structure, the Equal Opportunity Compliance Department is still connected to the same cluster of departments with which it was previously housed. But the group has a new title, i.e., the Division of Fraud Deterrence and Compliance Monitoring (FDCM). Name changes of other TWC units are noted throughout this plan. Note: no resources were removed from the EO Compliance Department and the EO Compliance Department still has the ability to call on additional resources as needed. In fact, regardless of whether names have changed, departments throughout TWC continue to assist the EO Compliance

Department; those cross-divisional supports come from multiple Divisions including Workforce, Unemployment Insurance, Civil Rights, Office of General Counsel, Business Operations, as well as the renamed Division of Information, Innovation and Insight (I|3).

Census data. The results of the US Census have been delayed and reduced due to challenges caused by the Covid-19 pandemic. For example, for 2021 the Census Department released “experimental estimates” instead of the usual 1-year data set from the American Community Survey. And release of the 5-year ACS data set was substantially delayed. Census data includes official government population figures for protected classes, including sex, race/ethnicity, age, and disability status, and those government figures are used in outreach and compliance efforts. TWC uses the most recent figures available and whenever possible expedites distribution of updated figures.

Emergency Response. The local boards and TWC made great efforts to respond to the emergency created by the Covid-19 pandemic. As programs shifted to provide service in new ways, EO provisions adjusted to maintain effectiveness. As one example, when the UI Division procured 4 vendors to provide temporary call center services to handle the enormous call volume, TWC continued to provide language assistance to recipients by routing calls from limited English proficient individuals to merit staff at our permanent call center facilities. Texas opted out of supplemental federal unemployment compensation related to the COVID-19 pandemic, effective June 26, 2021. Since then, we have been reverting to non-emergency service delivery methods. Going forward, TWC will follow the nondiscrimination provisions outlined in this NDP.

Finally, TWC has significant EO compliance materials beyond this NDP in the form of policies, procedures, monitoring tools and other documents. The most important of these materials are identified in the NDP and provided as supporting documents. Rather than restating the contents verbatim in the NDP, they are incorporated by reference.

# **(i) Assurances**

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## **Purpose**

The State of Texas complies and will continue to comply with the requirements of 29 CFR 38.25 through 38.27 related to the review of assurances, job training plans, contracts, and policies and procedures. Each application for WIOA funds includes the specified assurance committing the potential sub-recipient to comply fully with the nondiscrimination and EO provisions of WIOA Section 188 and 29 CFR 38. The assurance is deemed incorporated if not physically incorporated in the resulting contract or other agreement.

## **Narrative**

The TWC utilizes and incorporates a nondiscrimination assurance statement in documents providing WIOA Title I financial assistance, i.e., contracts, agreements, grants, cooperative agreements or other arrangements under which WIOA Title I funds are available. In order to maintain compliance with 29 CFR 38.25(a)(1), TWC communicates these requirements to all WIOA recipients, subrecipients, suppliers, and service providers through Texas's Combined State Plan, and the workforce directives issued as WD letters, and the regulations TWC adopted to implement the WIOA Nondiscrimination and Equal Opportunity Rules (Title 40, Part 20, Chapter 842) as required in 29 CFR 38.25. TWC and all WIOA recipients are obligated to maintain this assurance for the period during which WIOA Title I financial assistance is extended as stated in 29 CFR 38.26.

Each request for proposal, proposal, and application for financial assistance under WIOA Title I shall incorporate by reference the nondiscrimination requirements found in 29 CFR 38 or contain the following assurance as required by 29 CFR 38.25:

As a condition to the award of financial assistance from the Department of Labor under Title I of WIOA, the grant applicant assures that it has the ability to comply with the nondiscrimination and equal opportunity provisions of the following laws and will remain in compliance for the

duration of the award of federal financial assistance:

Section 188 of the Workforce Innovation and Opportunity Act (WIOA), which prohibits discrimination against all individuals in the United States on the basis of race, color, religion, sex (including pregnancy, childbirth, and related medical conditions, transgender status, and gender identity), national origin (including limited English proficiency), age, disability, or political affiliation or belief, or against beneficiaries on the basis of either citizenship status or participation in any WIOA Title I-financially assisted program or activity;

- Title VI of the Civil Rights Act of 1964, as amended, which prohibits discrimination on the bases 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.

The grant applicant also assures that, as a recipient of WIOA Title I financial assistance, it will comply with 29 CFR part 38 and all other regulations implementing the laws listed above. This assurance applies to the grant applicant's operation of the WIOA Title I-financially assisted program or activity, and to all agreements the grant applicant makes to carry out the WIOA Title I-financially assisted program or activity. The grant applicant understands that the United States has the right to seek judicial enforcement of this assurance.

During scheduled compliance reviews of WIOA recipients, the EO

Compliance Department monitors job training plans, contracts, and other similar agreements to ensure they are nondiscriminatory and contain the required nondiscrimination assurance statement. The EO Compliance Department also reviews recipient policies and policy issuances to ensure timeliness and compliance with nondiscrimination and equal opportunity provisions of Section 188 of WIOA.

Additionally, all recipients must include the covenant required by 29 CFR 38.27 in any instrument effecting or recording a transfer of property acquired or improved under any WIOA Title I-financially assisted programs and/or activities for the period during which WIOA Title I financial assistance is extended.

Note: The Agency Board Agreement is currently being revised. Any future version of the Agreement will continue to include required assurances.

## **Supporting Documentation**

Assurances set forth in the Combined State Plan

Agency-Board Agreement (ABA)

## **(ii) Equal Opportunity Officers**

### **Purpose**

The State of Texas complies and will continue to comply with the requirements of 29 CFR 38.28 through 29 CFR 38.33 related to the designation and responsibilities of state and local-level Equal Opportunity officers. In Texas, all individuals appointed as EO Officers are required to have the skills, abilities, knowledge, and authority to properly oversee and direct the EO programs and/or activities to which those individuals have been assigned. On October 13, 2017, the Texas Workforce Commission issued WD 01-15, Change 1, *Equal Opportunity Officers and Section 504 Coordinators*, which sets forth the requirements for and duties of Equal Opportunity Officers.

### **Narrative**

Below are the roles and responsibilities of designated EO staff separated by state-level and local-level functions.

#### **State-Level EO Staff and Functions**

The designated State-Level Equal Opportunity Officer is:

John Greytok, Deputy Director  
Division of Fraud Deterrence and Compliance Monitoring  
101 East 15th Street, Room 504  
Austin, TX 78778  
[john.greytok@twc.texas.gov](mailto:john.greytok@twc.texas.gov)  
(512) 936-3036  
Relay: 1-800-735-2989 (TTY)/711 (Voice)

The State-Level EO Officer reports directly to the Governor and the Executive Director of TWC on all EO and nondiscrimination matters as necessary. The State-Level EO Officer is responsible for ensuring recipients (as defined in 29 CFR 38.4[zz]) are in compliance with the nondiscrimination and equal opportunity provisions of Section 188 of the WIOA and 29 CFR Part 38. The State-Level EO Officer position is filled at all times. If the State-Level EO Officer position is vacated and a new State-Level EO Officer is designated, the

CRC will be notified of this change.

The State-Level EO Officer's duties as designated by 29 CFR 38.31 include but are not limited to:

- Coordinating responsibilities under 29 CFR 38;
- development and review of written policies to ensure that all policies are nondiscriminatory;
- NDP development, implementation, and maintenance; monitoring and investigating recipient's activities related to nondiscrimination and equal opportunity obligations;
- complaint policy development and implementation of the complaint procedure;
- handling of discrimination complaints;
- monitoring recipients for compliance with WIOA Section 188 and 29 CFR 38;
- conducting outreach and education about equal opportunity and nondiscrimination requirements; and
- serving as the Agency's liaison with the CRC.

The State-Level EO Officer also serves as Deputy Director of the Fraud Deterrence and Compliance Monitoring Division. This position is a TWC Executive-level position. The Fraud Deterrence and Compliance Monitoring safeguards programs and activities from violations of State and Federal statutes. Among other functions, it administers the daily EO operations and monitoring of WIOA Title I-financially assisted programs and/or activities related to nondiscrimination and equal opportunity. Additionally, it oversees the development and implementation of the NDP to give a "reasonable guarantee" that all recipients are complying with the nondiscrimination and equal opportunity provisions of Section 188 of WIOA.

The Deputy Director of the Fraud Deterrence and Compliance Monitoring (and State-Level EO Officer) and the EO Coordinator comprise the team that handles primary WIOA nondiscrimination and equal opportunity duties. Those staff coordinate resources from other departments and divisions. For example,

TWC's Fraud Deterrence and Compliance Monitoring Division employs sufficient staff and adequate resources to ensure compliance with the nondiscrimination and equal opportunity provisions of Section 188 of the WIOA in accordance with 29 CFR 38.28(b). Additional support to the EO Compliance Department is provided by TWC's Subrecipient Monitoring (SRM) Teams and Resolution Department. The EO Compliance Department provides training to SRM both through lecture and hands-on on-site training to ensure adequate knowledge of EO compliance guidelines. The SRM teams support the EO Compliance Department by means of field auditors and administrative staff who assist with ADA accessibility reviews, on-site monitoring of EO compliance, technical report writing activities, EO-related internal and external training needs, and clerical/administrative support, as does FDCM's Office of Investigations.

TWC WD Letter 16-14, Change 2, *Equal Opportunity Notice*, which will be discussed in the next section regarding Notice and Communication, provides that the State-Level EO Officer and the local-level EO Officer's name and contact information be made public in compliance with 29 CFR 38.29(c). Registrants, applicants, eligible applicants/registrants, participants, employees, applicants for employment, and interested members of the public are provided with EO Officer identification and contact information via hard-copy and electronic medium in accordance with this WD Letter. The name of the State-Level EO Officer is posted on the TWC intranet website, as well, for covered employees.

The State-level EO Officer and EO Coordinator attend internal and external training each year as necessary and appropriate to maintain competency around equal opportunity and nondiscrimination. Members of the EO team engage in ongoing training through resources such as on demand webinars through the LEAD Center, live training from Seena Foster's Title VI Consulting firm, and continuing legal education offered by the state and local bar associations. Also, staff receive periodic training from internal sources such as the TWC Civil Rights Division and the TWC Training and Development Department. TWC policy requires mandatory EO training for all staff as follows: One-time Only Required Training - Introduction to Electronic and Information Resources Accessibility (EIR) and New Employee Orientation (which includes a module on Equal Opportunity); Biennial Required Training - TWC Diversity, Equal Opportunity, and Nondiscrimination Training or Recognition and Prevention of Sexual Harassment Training or Supervisory Equal Opportunity Training or EEO Harassment Overview or Diversity in the



Workplace. External sources of training include the Texas Accessibility Academy conducted by Texas Department of Licensing and Regulation (TDLR) which covers compliance with Texas Accessibility Standards (both the State-level EO Officer and the EO Coordinator are ADA certified by TDLR), webinars (e.g., Accessibility Online webinars and those conducted by the LEAD Center) and other computer-based trainings. These external training opportunities are shared with local-level EO Officers through quarterly broadcast e-mails on topics of interest pertaining to equal opportunity and nondiscrimination issues.

In addition to receiving training, the TWC Equal Opportunity Compliance Department provides training to local-level EO Officers. This may be provided upon request either on-site (e.g., at local board training conferences for board and service provider staff), at LWDB-association meetings (e.g., Quality Assurance Network [QAN] which is comprised of local EO Officers and monitors) or by webinar. Also, EO training may be conducted at agency quarterly, semi-annual or annual forums and conferences. Additionally, TWC EO staff provides ongoing technical assistance to local-level EO Officers and other staff as needed. To ensure compliance with the DOL's Civil Rights Center's recommendation, TWC's Equal Opportunity Monitoring Department and Training and Development Department co-developed an interactive computer-based training (CBT) program on the Discrimination Complaint Process for use by the 28 Local Workforce Development Boards. This is available on TWC's intranet EO website. Local Area Workforce Development Boards are required to ensure all new local-level EO Officers, managers, supervisors, and employees receive this training within ninety (90) days of their designation as EO officer or assignment of EO-related duties. Trainings are also required as appropriate for subrecipient staff who manage the One-Stop/Workforce Centers.

## **Local-level EO Staff and Functions**

At the local level, all WIOA recipients, except small recipients and service providers, must make a local-level (i.e., Board) EO Officer appointment. TWC's WD Letter 01-15, Change 1 sets forth the requirements pertaining to Board/local-level EO Officers. These include that the EO Officer's name and contact information be made public to all applicants, eligible applicants, participants, employees, applicants for employment, and

members of the public; they must be senior-level recipient employees; and the EO Officer does not have other responsibilities or activities that create a conflict with the responsibilities of an EO Officer per 29 CFR 38.30. Reassignment of the Board/local-level EO Officer appointment will be recommended if any other responsibilities or activities create a conflict, or the appearance of a conflict, with the responsibilities of an EO Officer. Also, at least one person must be designated at the Board/local level to coordinate efforts to comply with requirements of Section 504 of the Rehabilitation Act 1973, as amended which may or may not be the same individual who serves as the local EO Officer.

The Board/local-level EO Officer is designated by each recipient and reports directly to the highest local administrative level and the TWC Equal Opportunity Monitoring Department in matters related to equal opportunity. The recipient's Executive Director shall not be designated as the recipient's EO Officer. The individual appointed as EO Officer must have access to sufficient staff and adequate resources to perform his or her duties assigned under 29 CFR 38.

The Board/local-level EO Officer's duties as designated by 29 CFR 38.31\_ include, but are not limited to:

- coordinating responsibilities under 29 CFR 38;
- development and review of written policies to ensure that all policies are nondiscriminatory;
- continuously monitoring and investigating the board's activities (and the activities of the entities that receive WIOA Title I-financial assistance from the board) related to nondiscrimination and equal opportunity obligations;
- conducting outreach and education about equal opportunity and nondiscrimination requirements;
- implementation of the complaint procedure and monitoring the established complaint procedures for compliance with 29 CFR 38.69 through 29 CFR 38.76;
- and liaison with the State-Level EO Officer and/or the CRC.

A written description of the Board EO Officer's responsibilities and documentation regarding the Board EO Officer's placement within the organizational structure must also be maintained. Board EO Officers who may not perform EO Officer functions on a full-time basis must describe all responsibilities, including those performed as the EO Officer, on their position descriptions.

As required by 29 CFR 38.29, dissemination of the EO Officer designation, including the local-level EO Officer, must include but is not limited to: identification by name, position, title, business address, e-mail address (if applicable), and telephone number (including TDD/TTY number) on all internal and external communication regarding nondiscrimination and equal opportunity provisions.

If a Board/local-level EO Officer position becomes vacant, the recipient (i.e., Board) is required to designate another EO Officer and then notify the State-Level EO Officer of this change. Upon receipt of such a change, an email is sent by the EO Coordinator to all local-level EO Officers across the state and to the Workforce and Board Support Division to update this information on LWDB contacts lists. Although it is acceptable for a Board to designate a member of subrecipient staff as a secondary EO Officer at the local level, EO Officer responsibilities at the local level remain with the Board's EO Officer. Although small recipients do not need to designate EO Officers who have the full range of responsibilities, they must designate an individual who will be responsible for processing complaints as well as developing and publishing complaint procedures as required by 29 CFR 38.69 through 29 CFR 38.76.

As outlined in WD 01-15, Change, 1, local-level EO Officers must take annual training to maintain competency. At the Board/local level, EO Officers are required to maintain records of all EO-related training received or conducted and complete at least 10 hours of training annually. A review of trainings attended by the local-level EO Officer will be conducted during the Board's EO compliance review by the state EO Compliance Monitor.

In addition to receiving training, Board/local-level EO Officers also develop, coordinate, schedule, and monitor EO training of subrecipients. Areas of training they may provide include but are not limited to: EO laws and regulations; sexual harassment; NDP requirements; Section 504 of the

Rehabilitation Act of 1973, as amended; adherence to Texas Accessibility Standards for physical locations; and complaint procedures. Board EO Officers provide training to secondary EO Officers and members of the recipients' staff who are assigned responsibilities under nondiscrimination and equal opportunity provisions of Section 188 of the WIOA.

Nothing in the regulations limits or precludes the TWC Equal Opportunity Compliance Department and/or the CRC from monitoring directly any WIOA recipient or from investigating any matter necessary to determine a recipient's compliance with the nondiscrimination and equal opportunity provisions of Section 188 of the WIOA.

## **Supporting Documentation**

[WD 01-15, Change 1](#), *Equal Opportunity Officers and Section 504 Coordinators*

[WD 16-14, Change 2](#), (and attachments) *Equal Opportunity Notice*

[LEAD Center](#) (source for continuing education)

Seena Foster's [Title VI Consulting](#) (source for continuing education)

Job Description for State-Level EO Officer

Job Description for the Equal Opportunity Coordinator

Fraud Deterrence and Compliance Monitoring (FDCM) Organizational Chart

TWC Organizational Chart

Example local-level EO Officer Job Description

Example LWDB Organizational Chart

List of local-level EO Officers with Contact Information

Orientation to Discrimination Complaint Procedures Form

Training Summary for EO Compliance Department Staff

## **(iii) Notice and Communication**

### **Purpose**

The State of Texas complies and will continue to comply with the requirements of 29 CFR 38.34 through 29 CFR 38.39 related to the establishment of a notice and communication system. Through an effective notice and communication system, all WIOA recipients in the State of Texas ensure that all registrants, applicants, eligible applicants/registrants, participants, employees, applicants for employment, and members of the public, including those with disabilities or who may be limited English proficient, are aware of both the recipient's obligation to operate its WIOA Title I-financially assisted programs and/or activities in a nondiscriminatory manner and the extent of the rights of members of these groups to file complaints of discrimination.

### **Narrative**

Texas continues its system of procedure communication which includes dissemination of the "Equal Opportunity is the Law" notice (i.e., the Notice), dissemination of the EO policy statement on appropriate use of tag lines, and inclusion of a Babel Notice on all communications of vital information. TWC ensures these requirements are conveyed to all WIOA recipients through numerous and diverse sources such as the Combined State Plan, the regulations TWC adopted to implement the WIOA Nondiscrimination and Equal Opportunity Rules, the State Nondiscrimination Plan (NDP), Technical Assistance Bulletins, directives issued as TWC Workforce Development Letters (WD letters), and general technical assistance through correspondence and training.

Compliance with Notice and Communication requirements of 29 CFR 38.34 through 29 CFR 38.39 is reviewed annually during the Board compliance review.

## **Equal Opportunity is the Law Notice**

As provided in 29 CFR 38.35, the Equal Opportunity is the Law Notice must contain the following specific wording:

### Equal Opportunity Is the Law

It is against the law for this recipient of Federal financial assistance to discriminate on the following bases: Against any individual in the United States, on the basis of race, color, religion, sex (including pregnancy, childbirth, and related medical conditions, sex stereotyping, transgender status, and gender identity), national origin (including limited English proficiency), age, disability, or political affiliation or belief, or, against any beneficiary of, applicant to, or participant in programs financially assisted under Title I of the Workforce Innovation and Opportunity Act, on the basis of the individual's citizenship status or participation in any WIOA Title I-financially assisted program or activity.

The recipient must not discriminate in any of the following areas:

- Deciding who will be admitted, or have access, to any WIOA Title I-financially assisted program or activity;
- providing opportunities in, or treating any person with regard to, such a program or activity; or
- making employment decisions in the administration of, or in connection with, such a program or activity.

Recipients of federal financial assistance must take reasonable steps to ensure that communications with individuals with disabilities are as effective as communications with others. This means that, upon request and at no cost to the individual, recipients are required to provide appropriate auxiliary aids and services to qualified individuals with disabilities.

### What to Do If You Believe You Have Experienced Discrimination

If you think that you have been subjected to discrimination under a WIOA Title I-financially assisted program or activity, you may file a complaint within 180 days from the date of the alleged violation with either:

The recipient's Equal Opportunity Officer (or the person whom the recipient has designated for this purpose); or The Director, Civil Rights Center (CRC), U.S. Department of Labor, 200 Constitution Avenue NW., Room N-4123, Washington, DC 20210 or electronically as directed on the CRC Web site at [www.dol.gov/crc](http://www.dol.gov/crc).

If you file your complaint with the recipient, you must wait either until the recipient issues a written Notice of Final Action, or until 90 days have passed (whichever is

sooner), before filing with the Civil Rights Center (see address above).

If the recipient does not give you a written Notice of Final Action within 90 days of the day on which you filed your complaint, you may file a complaint with CRC before receiving that Notice. However, you must file your CRC complaint within 30 days of the 90-day deadline (in other words, within 120 days after the day on which you filed your complaint with the recipient).

If the recipient does give you a written Notice of Final Action on your complaint, but you are dissatisfied with the decision or resolution, you may file a complaint with CRC. You must file your CRC complaint within 30 days of the date on which you received the Notice of Final Action.

Following updates to the Equal Opportunity is the Law Notice implemented by 29 CFR 38.35, updated policy guidance WD Letter 16-14, Change 2, *Equal Opportunity Notice* with attachments was issued on March 1, 2021. This updated guidance reaffirms recipient obligations to comply with the requirements set forth in 29 CFR 38.34. Guidance in this WD letter requires recipients to:

- provide initial and continuing notice that they do not discriminate on any prohibited basis;
- provide the notice to:
  - registrants, applicants, and eligible registrants and applicants;
  - WIOA participants;
  - Applicants for employment and employees;
  - Unions or professional organizations that hold collective bargaining or professional agreement with the recipient;
  - Subrecipients that receive WIOA Title I financial assistance from the recipient; and
  - Members of the public, including those with impaired vision or hearing and those with limited English proficiency (LEP);
- Take appropriate steps to ensure that communications with individuals with disabilities are as effective as communications with others; and

- To ensure meaningful access to each LEP individual served or encountered so that LEP individuals are effectively informed about, and/or able to participate in, the program or activity.

In accordance with WD Letter 16-14, Change 2, the Equal Opportunity is the Law Notice is distributed in the following ways:

- The *"Equal Opportunity is the Law"* notice is posted prominently, and in reasonable numbers and places, in approximately 250 full-service and satellite one-stop/workforce centers and Vocational Rehabilitation centers throughout the twenty-eight (28) local workforce development board (LWDB) areas in the state. In addition to State EO Officer information, poster notices give the name of the organization/LWDB, local-level equal opportunity officer's name, address, telephone number, fax number and TTY/TDD/Relay phone number. The notice is also posted in Spanish and in language(s) other than English or Spanish in areas where a significant portion of the population may speak a language other than English or Spanish. The notices the Boards are to use are an attachment to WD 16-14, Change 2.
- The *"Equal Opportunity is the Law"* notice is posted on the local board websites maintained by each of the twenty-eight (28) workforce development boards (LWDBs) to ensure the Notice describing recipient obligations on equal opportunity and nondiscrimination are provided by electronic/digital means to the public. During compliance reviews, board websites are reviewed both locally and by the state to ensure that EO notice requirements are met. At a minimum, reviews include examination that EO taglines and the Texas Relay phone number are present on the website, that a link to the *"Equal Opportunity is the Law"* notice is maintained and working, that the wording of the EO notice complies with regulatory requirements, and that EO Officer contact information is posted.
- The Orientation to Discrimination Complaint Procedures Form containing the "Equal Opportunity is the Law" notice and appropriate contact information for the local and state EO Officer, is given to potential participants and participants during the orientation and application process at the one-stop centers and maintained in their participant files. Sample forms are posted on the EO intranet website



for Boards to use as-is or as models for locally designed notices used at workforce centers.

Additionally, the "Equal Opportunity is the Law" Notice is disseminated in the following ways on the state-level:

- The TWC "Equal Opportunity is the Law" notice is posted prominently, and in reasonable numbers and places, in TWC enterprise locations, such as State Offices and local/field offices where TWC employees may work or the public may interact with staff, including but not limited to human resources offices, telecenters, tax offices, workforce programs, and Commissioners' offices. For the benefit of remote and teleworking staff, TWC created a "Required Notices Virtual Corkboard" available online which contains the Equal Opportunity is the Law notice as well as various other notices and disclosures. Poster notices provide the name of the TWC EO Officer and appropriate contact information: address, telephone number, fax number and TTY/TDD/Relay number.
- TWC's internet website provides continuing notice on equal opportunity and nondiscrimination for applicable programs and activities and the State-Level EO Officer's contact information by means of the Equal Opportunity is the Law page which is available in English, Spanish, and Vietnamese (the top three languages spoken in Texas).

As mentioned above, The Equal Opportunity is the Law Notice must be provided in appropriate formats to individuals with disabilities and LEP individuals. Whenever the notice is given in an alternative format to a participant with a disability, it must be so documented in the participant's individual record.

To ensure the EO Notice is available in an alternate format for workforce solutions customers who are blind or have visual impairments, TWC's Braille Specialist translates/embosses copies of the EO Notice into Braille. Copies were distributed within appropriate state-office departments of TWC, TWC Regional Integrated Service Area (ISA) offices, and all 28 Local Workforce Development Boards (Boards) located through-out the state to have available upon request for visually impaired individuals. Additionally, the Unemployment Benefits Handbook, distributed by TWC to customers upon

applying for unemployment insurance benefits, was translated into Braille. The EO Compliance Department remains available to coordinate efforts with the TWC Braille Specialist upon request. Further, the EO Notice is downloaded onto accessible workstations to be read with a screen reader if needed.

## **Tagline and Continuing Notice**

In accordance with 29 CFR 38.38, the Agency issued WD Letter 17-10, *Outreach and Promotional Materials, Advertising, Sponsorships, Employee Apparel, and Award Ceremonies Charged to Grant Awards and Subawards Funded through the Texas Workforce Commission*. This directive, issued in 2010, is about Outreach and Promotional Materials and it sets forth the requirements regarding recipient publications, broadcasts, and other communications. These communications must include a form of the Notice (i.e., taglines) indicating that the WIOA Title I-financially assisted program or activity in question is “an equal opportunity employer/program” and that “auxiliary aids and services are available, upon request, to individuals with disabilities.” These tagline statements must be included on all recruitment brochures and other materials ordinarily distributed or communicated in written and/or oral form, electronically and/or on paper, to describe programs financially assisted under Title I of WIOA or to describe the requirements for participation by recipients and participants. Where such materials indicate that the recipient can be reached by telephone, the materials must include a TDD/TTY number or provide an equally effective means of communication for individuals who are hearing impaired.

TWC reviews all TWC brochures, publications, and broadcasts for the EO Notice and the appropriate tag lines, and these reviews include staff in the Document Services/Print Shop unit as well as the staff who create the materials in the Campaigns and Creative Content Department, part of the Division of Outreach and Employer Initiatives. Each local-level recipient is responsible for including the EO policy statement and the appropriate tag lines on all local-level brochures, publications, and broadcasts. The TWC EO Compliance Department monitors each recipient for compliance with this requirement.

# Communication

## Communications with Individuals with Disabilities

Pursuant to 29 CFR 38.15, the State of Texas is dedicated to ensuring that communications with individuals with disabilities are as effective as communication with others.

During annual compliance monitoring, and through the Center Certification process, the following items are verified:

- Minimum standards for office accessibility to include:
  - screen magnifier software,
  - screen reader software,
  - quality headphones and speakers,
  - qualified staff readers (staff bi-lingual in English and Spanish),
  - large print computer keyboard,
  - speech amplification systems,
  - telephones with volume control and/or amplification devices to include handset amplifiers, large button, and hearing aid compatibility,
  - video text display phones, video relay interpreting services (VRIS), or video relay services (VRS),
  - interpreters-sign, oral or cued speech (staff or contracted) and/or video remote interpreting services,
  - available service for translating vital documents and written materials for orientations, workshops, training, etc.,
  - a trackball mouse, and
  - adjustable height desks, adjustable keyboard tray, and/or adjustable chairs

Additional areas checked during monitoring related to communication with

persons with disabilities include but are not limited to:

- Compliance with Section 508 and WCAG 2.0 AA for electronic and information technology
- Information and signage consistent with the Texas Accessibility Standards
- Reasonable accommodation and modification policies and procedures

TWC's Accessibility Team created Accessibility Desk Aids that address high-level steps for ensuring that authored digital content is in alignment with Section 508 and WCAG 2.0 AA standards. These desk aids were sent to all LWDBs via hard copy and electronic copy to distribute as necessary to all staff who author or edit electronic content.

Under Title IV of the Americans with Disabilities Act (ADA), a message relay telephone system is mandated in each state. In Texas, this system is Relay Texas. Relay Texas provides statewide telephone accessibility to speech and hearing-impaired individuals. TTY users have two options to connect to a Relay agent who can then process the call: they may dial the Relay Texas number 711 or dial 1-800-735-2989. The Relay Texas telephone number must be indicated wherever telephone numbers are included in brochures, publications, and broadcasts. Technical Assistance (TA) Bulletin 225, *Customers Requiring Relay Services*, was issued by TWC on July 9, 2010, providing LWDBs with information on relay services which are available to the public free of charge.

Effective September 1, 2016, Senate Bill (SB) 208 - 84(R) directed the transfer of several programs from the Texas Department of Assistive and Rehabilitative Services (DARS) to the Texas Workforce Commission (TWC). These included the Vocational Rehabilitation (VR) program for individuals who are blind or have visual impairments; the VR program for individuals with other disabilities; the Independent Living Services program for Older Individuals Who are Blind; and the Business Enterprises of Texas program. When these programs transferred to TWC they were rebranded from DARS programs to TWC programs but retained their identity as vocational rehabilitation services. Additionally, as part of the transition plan, TWC integrated vocational rehabilitation and other transitioning staff into the network of Local Workforce Development Boards. VR staff are continuing to co-locate into Workforce Solutions Offices. These

integrations allow for strengthened collaboration and a greater understanding of resources, aids, and services for customers with disabilities.

### Communication with Limited English Proficiency (LEP) Individuals

In Texas, information and services are available in languages other than English when a “significant number or proportion” of persons to be served are individuals with limited English proficiency (LEP). TWC issued EO Letter 03-01 on June 15, 2001, to provide Limited English Proficiency Guidance to the LWDBs. Recipients are responsible for ensuring that services and information are provided in languages other than English if:

- a) A significant number or proportion of the population eligible to be served, or likely to be directly affected, by a WIOA Title I-financially assisted program or activity may need services or information in a language other than English in order to be effectively informed about, or able to participate in, the program or activity. Where such a significant number or proportion exists, a recipient must take the following actions:
  - 1) Consider
    - (i) The scope of the program or activity, and
    - (ii) The size and concentration of the population that needs services or information in a language other than English; and
  - 2) Based on those considerations, take reasonable steps to provide services and information in appropriate languages. This information must include the initial and continuing notice required under §38.34.
- b) In circumstances other than those described in paragraph (a), a recipient should nonetheless make reasonable efforts to meet the particularized language needs of limited-English-speaking individuals who seek services or information from the recipient.

With Spanish being the second most widely spoken language in Texas behind English, recipients have been and continue to be proactive in providing services, communications, and activities in Spanish. However, to ensure that

other groups, if in significant number or proportion, can also avail themselves of the services provided, recipients are asked to take reasonable steps to provide services and information to these groups. To accomplish this, TWC developed the LEP Guide for Working Professionals in 2007.

### Model Language Assistance Program

LWDBs are asked to follow the model language assistance program below. This model plan incorporates a variety of options and methods for providing meaningful access to LEP participants:

- A formal written language assistance program reviewed annually;
- Identification and biennial assessment of the languages that are likely to be encountered and estimating the number of LEP persons that are eligible for services and that are likely to be affected by its program or activity through a review of census, client utilization data and statistics from school systems, community agencies and organizations;
- Outreach to LEP communities, advertising program eligibility and the availability of free language assistance;
- Posting of signs in lobbies and in other waiting areas, in several languages, informing applicants and clients of their right to free interpreter services and inviting them to identify themselves as persons needing language assistance;
- Use of "I Speak Cards" by intake workers and other client contact personnel so that applicants/clients can identify their primary languages;
- Requiring intake workers to note the language of the LEP person in his/her record so that all subsequent interaction will be conducted in the appropriate language;
- Employment of a sufficient number of staff, bilingual in appropriate languages, in applicant and client contact positions. These persons must be qualified/certified interpreters;
- Contracts with interpreting services that can provide qualified

interpreters in a wide variety of languages, in a timely manner;

- Formal arrangements with community groups for qualified and timely interpreter services by community volunteers;
- An arrangement with a telephone language interpreter line;
- Translation of application forms, instructional, informational, and other key documents into appropriate languages other than English. Oral interpretation of documents for persons who speak languages not regularly encountered;
- Procedures for effective telephone communication between staff and LEP persons, including instructions for English-speaking employees to obtain assistance from bilingual staff or interpreters when initiating or receiving calls from LEP persons;
- Notice to and training of all staff, particularly applicant and client contact staff, with respect to the recipient's Title VI and Section 188 obligation to provide language assistance to LEP persons, and on the language assistance policies and procedures to be followed in securing such assistance in a timely manner;
- Insertion of notices, in appropriate languages, about the right of LEP applicants and clients to free interpreters and other language assistance, in brochures, pamphlets, manuals, and other materials disseminated to the public and to staff;
- Notice to the public regarding the language assistance policies and procedures, plus notice to and consultation with community organizations that serve LEP persons regarding problems and solutions, including standards and procedures for using their members as volunteer interpreters;
- Adoption of a procedure for the resolution of complaints regarding the provision of language assistance, and for notifying and educating clients of the right to file a complaint of discrimination under Title VI and Section 188 with DOL;
- Appointment of a senior level employee to coordinate the language assistance program and ensure that there is regular monitoring of

the program; and,

- Consideration of LEP needs when implementing new programs or activities, publishing new forms or notices, etc.

TWC routinely contracts with vendors who are federally certified by the Administrative Office of the U.S. Courts for Spanish interpreter/translator services used in all hearings involving a Spanish-speaking party or witness.

TWC also contracts with additional non-federally certified vendors who provide multi-language professional interpreter/translator service for languages other than Spanish.

In handling intake calls, all four of Texas's tele-centers have bilingual staff to communicate with those callers who speak Spanish. Callers are offered a language choice of English or Spanish by the automatic call distribution telephone system and then routed to a customer service representative that is able to deliver service in the selected language. If all Spanish-speaking agents in a Tele-Center are busy, calls are routed to other centers where agents are available to handle the Spanish language calls. For callers who speak neither Spanish nor English, TWC uses a dial-in language line interpreter service that can provide translation services in the language of the caller's choice.

Recipients endeavor to identify whether a concentrated population of LEP customers exists in the specific area and if equal services are being provided to the LEP population. With the steady growth in the State's population each year, and in anticipation of demographic changes within their service areas, the Boards are moving forward technologically in meeting the language needs within their service areas.

### Babel Notice

Federal regulations, in 29 CFR 38.9(g)(3), state that "recipients must include a 'Babel Notice,' indicating in appropriate languages that language assistance is available, in all communications of vital information, such as hard copy letters or decisions or those communications posted on Web sites." Pursuant to that requirement TWC issued a new directive (WD Letter 02-19, and attachment, *Babel Notices*) to formalize and standardize the Babel notice throughout the state, and the directive was sent to all local-



level EO Officers and all LWDBs to implement the Babel notice.

Federal regulations do not require a verbatim Babel Notice, but a sample Babel Notice in English, Spanish, and Vietnamese can be seen below.

#### Babel Notice in English

This document contains vital information about requirements, rights, determinations, and/or responsibilities for accessing workforce system services. Language services, including the interpretation/translation of this document, are available free of charge upon request.

#### Babel Notice in Spanish

Este documento contiene información importante sobre los requisitos, los derechos, las determinaciones y las responsabilidades del acceso a los servicios del sistema de la fuerza laboral. Hay disponibles servicios de idioma, incluida la interpretación y la traducción de documentos, sin ningún costo y a solicitud.

#### Babel Notice in Vietnamese

Tài liệu này có thông tin quan trọng về các yêu cầu, quyền hạn, quyết định, và/hoặc trách nhiệm để sử dụng các dịch vụ của hệ thống nhân lực. Các dịch vụ trợ giúp ngôn ngữ, bao gồm thông dịch/chuyển ngữ tài liệu này, có sẵn miễn phí khi quý vị yêu cầu.

When determining whether a document must have a Babel Notice, guidance has been given to ask the questions below. If the answer to any of the bullets below is "yes," **and** the LWDA is authorized to alter the document, a Babel Notice must be included.

- Does the form/document contain information about services or programs of Workforce Solutions?
- Does the form/document contain information the customer needs to know to obtain or retain a service or benefit?
- Does the form/document contain information about rights, responsibilities, or potential consequences?
- Is the form/document asking an individual to consent to terms of an agreement, or to consent to perform certain actions?

- Is the form/document asking an individual to:
  - provide confidential information,
  - provide information as a condition of receiving services or benefits,
  - consent to release of their confidential information, or
  - permit a background check or drug screen of themselves?
- Is the information required by law, regulation, rule, or policy to be provided to the customer?
- Is the form/document intended for individuals accessing, attempting to access, or being outreached for workforce system programs or services (including job seekers, providers, and parents)? Some examples include (but are not limited to): forms customers fill out, letters that require some kind of action or that customers must understand to apply for/retain/take advantage of a service or benefit, documents used to promote services, etc.

All recipients are required to include a Babel Notice in English and Spanish on documents of vital information. Recipients are required to expand the Babel Notice to include other languages when their individual service areas warrant a need for other languages based on demographics.

## **Supporting Documentation**

[WD 16-14, Change 2](#), *Equal Opportunity Notice*

Attachments to WD-14, Change 2: [English](#) Notice, [Spanish](#) Notice, [USDA Poster](#)

[WD 17-10](#), *Outreach and Promotional Materials, Advertising, Sponsorships, Employee Apparel, and Award Ceremonies Charged to Grant Awards and Subawards Funded through the Texas Workforce Commission*

[WD 02-19](#), *Babel Notice*

Attachment to WD 02-19, [Babel Notice Requirements](#)

Technical Assistance [Bulletin 225](#), *Customers Requiring Relay Services*

EO Letter 03-01

[WD 57-07](#), Interpreter Services for Deaf and Hard of Hearing Individuals

[WD 24-01](#), with attachment, Prohibition Against Discrimination Based on Disability or Limited English Proficiency in the Administration of Workforce Services

[Attachment to WD 24-01](#), Department of Health and Human Services, Office of Civil Rights, Decision against the Massachusetts Department of Transitional Assistance

[TA 287](#), Training, Assistive Technology, and Accessibility

Brochure Samples (tagline)

Minimum Standards for Accessibility Table

LEP Plan Template

Accessibility Desk Aids

Texas Labor Code § 301.064

One-Stop Certification Form

# (iv) Data and Information Collection

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## Purpose

The State of Texas complies and will continue to comply with the requirements of 29 CFR 38.41 through 29 CFR 38.45 related to data and information collection and maintenance. The system and format in which the records and data are kept is designed to allow the Governor and the CRC to conduct statistical analyses to verify compliance with Section 188 of WIOA and 29 CFR 38 and to better meet the needs of the potential and current customers. The responsibility for data and information collection and maintenance within each LWDA is shared by the Board and the Agency.

## Narrative

All recipients are responsible for collecting and maintaining obtained participant and potential participant information. All recipients are monitored annually to ensure compliance with record keeping and contract requirements, to assess EO performance, and to identify adverse action or disparate treatment of individuals or groups of individuals who have been discriminated against on the following bases: race, color, religion, sex, national origin, age, disability, political affiliation or belief, participation in any WIOA Title I-financially assisted programs and/or activities, and/or for beneficiaries only, citizenship.

Data and information collection and maintenance policies are developed and communicated to all recipients by TWC through the Combined State Plan, WD 17-07, Change 1, *Storage and Use of Disability-Related and Medical Information*, WD Letter 27-07, *Integrated Data Collection and Performance Management* (and Attachment) and the WIOA Nondiscrimination and Equal Opportunity Rules.

The Combined State Plan states that, "TWC provides Boards, other grantees, and state staff with guidance regarding data collection and reporting. This includes both common and program-specific guides that outline data entry deadlines and requirements for recording data on

Eligibility Determination, Service Dates and Details, Outcome Tracking (for those elements not tied to wage records), and Case Management. TWC's Workforce Development Division provides technical assistance to Boards and grantees to help ensure they timely and accurately enter data as required into the appropriate systems. TWC's Subrecipient Monitoring Department conducts data validation and other Board and grantee reviews to support system and data integrity.

TWC's Division of Information Innovation & Insight (I|3) is responsible for producing, analyzing, and reporting performance data. I|3 provides timely, accurate, and understandable information and analyses relevant to the performance, accountability, and integrity of the Texas workforce system. I|3's reporting ensures that TWC, Board, and grantee management have the information necessary to make policy decisions that will help the system meet or exceed performance expectations, thus offering the opportunity for Texas businesses, residents, and communities to achieve and sustain economic prosperity."

## **Data Collection**

As required by 29 CFR 38.41, four pieces of demographic information are gathered in individual records for each applicant, eligible applicant, participant, terminnee, employee, and applicant for employment: sex, race/ethnicity, age, disability status, LEP status and preferred language. This data is contained in The Workforce Information System of Texas (TWIST) and/or the Unemployment Compensation benefit systems, automated record-keeping systems separate from the applicant's individual records. All individual records and electronic data are maintained for a minimum of three years, accessible to authorized users only, and made available for review by the State-Level EO Officer and/or the CRC upon request. Collection of this information is a baseline to ensuring recipients in the state can adequately determine outreach needs in the LWDA.

On June 19, 2019, TWC issued WD letter 16-19, *Collection of Limited English Proficiency Status and Preferred Language Data*. This directive was to implement 29 CFR §38.41(b)(2) which requires recipients to record the LEP status of each applicant, registrant, participant, and participant whose participation ended during the applicable program year, and also to record the preferred language of LEP customers, all of which must be done in a

manner that ensures confidentiality and allows for accurate reporting.

## **Disability-Related and Medical Data**

WD 17-07, Change 1 directs LWDBs and other grant recipients on the storage and use of disability-related and medical information. This WD letter specifies that medical or disability-related data obtained about an individual, including information that would lead to the disclosure of a disability, must be collected on separate forms and maintained in files separate from an individual's other information. Further, it also directs that this information, whether in electronic or hard copy, must be locked or otherwise secured and stipulates the categories of individuals who are allowed access to this information.

## **Complaint Data**

Complaints alleging discrimination on one or more of the following bases: race, color, religion, sex, national origin, age, disability, political affiliation or belief, participation in any WIOA Title I-financially assisted programs and/or activities, and/or for beneficiaries only, citizenship; may be filed at the local level, the state level, or with the CRC. Each written complaint filed at the local level is noted on a local-level complaint log and processed by each designated local-level EO Officer. Local-level complaint logs include no less than the following information: the name and address of the complainant, the ground of the complaint, a description of the complaint, the date the complaint was filed, the disposition and date of the complaint, and other pertinent information. All local-level complaint logs are maintained for at least three years and will be available for review by the State-Level EO Officer during annual monitoring or on request and/or by the CRC upon request.

All complaints filed at the state level are processed according to complaint procedures outlined in the complaint processing section of this document and noted on the State-Level Complaint Log. Program discrimination complaints are those filed under WIOA regulations that allege discrimination on the ground of race, color, religion, sex, national origin, age, disability, political affiliation or belief, participation in any WIOA Title I-financially assisted programs and/or activities, and/or for beneficiaries only, citizenship. The program discrimination complaint data entry form includes no less than the following information: the name and address of the

complainant, the ground of the complaint, a description of the complaint, the date the complaint was filed, the disposition and date of the complaint, and other pertinent information. All program discrimination complaint data is maintained by the TWC Equal Opportunity Compliance Department for at least three years and is available for review by the State-Level EO Officer and/or the CRC upon request.

## **Data Security**

Data security and confidentiality of information are emphasized at all levels by TWC policy: TWC has adopted as its information security risk management framework (RMF) the Texas Cybersecurity Framework (TCF) which is aligned with the National Institute of Standards and Technology (NIST) 800-53 framework and the Federal Information Security Modernization Act (FISMA). TWC policies, standards and published guidance for Information Security include: TWC Information Security Manual; TWC Treasury Offset Program Manual; TWIST Data Security Administration and User Access Management Procedures; Cybersecurity Standard Operating Procedures, IT Standard Operating Procedures; WD Letter 11-16, *Access and Data Security for Workforce Applications*; WD Letter 06-07, Change 3, *The Workforce Information System of Texas: New Data Integrity Process*; and WD Letter 02-18, *Handling and Protection of Personally Identifiable Information and Other Sensitive Information*.

## **Information to be Provided to CRC**

In Texas, per Administrative Code Title 40, Part 20, §842.6(c), all recipients must notify the State-Level EO Officer and CRC within five business days of receipt of any complaint, administrative enforcement action and/or lawsuit brought against them that allege discrimination on one or more of the following bases: race, color, religion, sex, national origin, age, disability, political affiliation or belief, and, for WIOA beneficiaries only, citizenship or participation in a WIOA Title I financially assisted program or activity. This notification will include the names of the parties to the lawsuit; the forum where the case is filed; the relevant case numbers; and the name of any other federal agency that conducted a civil rights compliance review or complaint investigation, and found the recipient to be in noncompliance, during the two years before the State-Level EO Officer and/or the CRC began their examination. *See also*, 29 CFR

38.42(b).

Any recipient who is also a subrecipient of a Board shall provide the Board with the same notification as described in the adopted rules at §842.6(c). All recipients will provide, in a timely manner, any information and data necessary to investigate complaints and conduct compliance reviews on a ground prohibited under the nondiscrimination and equal opportunity provisions of Section 188 of the WIOA and 29 CFR 38. If requested by the State-Level EO Officer and/or the CRC, recipients will provide, in a timely manner, the particularized information and/or submit the periodic reports considered necessary to determine compliance with the nondiscrimination and equal opportunity provisions of Section 188 of the WIOA or 29 CFR 38 in accordance with 29 CFR 38.42.

The identity of any individual who furnishes information relating to, or assisting in, an investigation or compliance review, including the identity of any individual who files a complaint, will be kept confidential to the extent possible. An individual whose identity it is necessary to disclose will be protected from retaliation.

## **Supporting Documentation**

[WD 17-07, Change 1](#), *Storage and Use of Disability-Related and Medical Information*

[WD 27-07](#), *Integrated Data Collection and Performance Management*

[Attachment to WD 27-07](#), *Integrated Data Collection and Performance Management Reference*

[WD 16-19](#), *Collection of Limited English Proficiency Status and Preferred Language Data*

[WD 11-16](#), *Access and Data Security for Workforce Applications*

[WD 06-07, Change 3](#), *The Workforce Information System of Texas: New Data Integrity Process*

[WD 02-18](#), *Handling and Protection of Personally Identifiable Information and Other Sensitive Information*



[1 TAC 202](#), *Information Security Standards regulations, promulgated by the Texas Department of Information Resources, Texas Administrative Code, Title 1, Chapter 202*

# **(v) Affirmative Outreach**

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## **Purpose**

The State of Texas acts to include members of varying demographic groups in its WIOA Title I-financially assisted programs and/or activities through universal access principles in accordance with House Bill (HB) 1863 and 29 CFR 38.40. HB 1863, passed by the Texas Legislature in 1995, created Texas's workforce development system which includes, but is not limited to, the Texas Workforce Investment Council, the Texas Workforce Commission, 28 local workforce development boards, and workforce centers and satellite offices. The State of Texas communicates universal access obligations to TWC and all WIOA recipients through assurances of the Combined State Plan.

## **Narrative**

Through the Combined State Plan and the regulations and directives TWC adopted to implement WIOA Nondiscrimination and Equal Opportunity Rules, Texas establishes clear objectives for all WIOA Title I-financially assisted programs and/or activities and holds local areas accountable for their achievement. The WIOA empowers LWDBs to set local-level policies and procedures in order to achieve universal access as prescribed by federal laws and regulations. When possible, TWC delegates full responsibility to the LWDB for targeting resources and designing the provision of services in a manner that addresses locally determined needs and achieves effective results.

Texas requires all WIOA recipients to assure the development of written policies and procedures for core program provision services. These policies and procedures are based on analysis of employer and job-seeker needs and analysis of adequacy of resources, from all local funds, to assure maximum access to services for recipients of public assistance and other low-income persons. In general, the criteria include the availability of other funds for providing WIOA type services in the local area and the needs of the specific groups within the local area. Boards are required to develop a process that gives priority for services to the recipients of public assistance

and other low-income individuals and, if sufficient funds are available, also serves other individuals who meet eligibility requirements.

TWC has issued guidance to the LWDBs to assist them in extending their current Local Workforce Development Board Plans that implement WIOA requirements, which include universal access obligations. To ensure that recipients have made, and will continue to make, universal access efforts, Boards submit, for TWC approval, strategic and operational plans outlining how universal access will be achieved. Extended strategic and operational plans will retain Board efforts (including outreach) to broaden the composition of the pool of those considered for participation or employment in their WIOA Title I-financially assisted programs and/or activities in an effort to include members of both sexes, the various racial/ethnic and age groups, and persons with disabilities. Boards also indicate, in their strategic and operational plans, how they will assess and substantiate current strategic and operational approaches as well as modify any changes in categorical program components of required core services as required by 29 CFR 38.40. These core services include job search and job placement, career counseling, initial assessment, and follow-up services, thereby allowing the Boards to provide services to a universal population as envisioned by HB 1863 and 29 CFR 38.40.

To ensure that training and placement services are provided, Boards further include a description of their local policies and procedures in their strategic and operational plans to: identify and address barriers to participation; inform customers of nontraditional career options; identify and refer individuals to supportive services depending on individual need; and assess aptitude for the required skills to compete for in-demand jobs.

The stream of multiple funds and multiple partners in workforce centers provides the broadest possible menu for access to all job-seekers, including those with individualized needs, such as displaced homemakers, migrant and seasonal farmworkers, public assistance recipients, women and minorities, individuals training for nontraditional employment, veterans, individuals with multiple barriers to employment, older individuals, individuals with limited English proficiency, and persons with disabilities. TWC and the LWDBs are also responsible for TANF recipient employment activities delivered in their areas. TWC also partners with the Texas Health and Human Services Commission in various interagency initiatives, such as

providing job training or job placement services to non-custodial parents who owe child support.

Boards also conduct comprehensive assessments and other intensive services in meeting the needs of specialized populations. Individualized counseling, job development, coordination with workforce center partners, and customized referral and placement services are all used in meeting the needs of older individuals, individuals with limited English proficiency, and other individuals with multiple barriers to employment. Recipients attempt to employ subrecipients, suppliers, and service providers who have multiple-language skills to assist with verbal and written translations as needed.

WD 01-15, Change 1, *Equal Opportunity Officers and Section 504 Coordinators*, sets forth the specific responsibility of local-level EO Officers in relation to 29 CFR 38.40. This WD letter requires that local-level EO Officers conduct outreach and education on equal opportunity and nondiscrimination requirements consistent with 29 CFR 38.40, which states that efforts should include, but are not limited to, advertising the recipient's programs and/or activities in media, such as newspapers or radio programs, that specifically target populations; sending notices about openings in the recipient's programs and/or activities to schools or community service groups that serve various populations; and consulting with appropriate community service groups about ways in which the recipient may improve its outreach and service to various populations.

Annually the EO Compliance department prepares a demographical summary of the population in each board area based on Census information. The annual reports use the latest Census figures. The Census data covers the entire state but is sorted to fit within each of the 28 board areas so that each region gets its own data. The annual reports focus on data related to protected classes. Similar data from the TWIST case management system is compiled to show figures of customers served. (Census categories do always match TWIST data fields, and therefore the comparison may not be exact, but the reports use the best match possible.) These reports assist local boards in deciding how to adjust their outreach efforts to inform the identified groups.

The EO Compliance Department is responsible for monitoring all WIOA recipients and ensuring compliance with the universal access element of

nondiscrimination and equal opportunity provisions of Section 188 of the WIOA which includes: a statistical analysis of records, including analyses by race/ethnicity, sex, age, disability status, LEP status and preferred language; an investigation of any significant differences; an investigation of any significant differences identified in participation in the programs, activities, or employment provided by the recipient; and an assessment to determine whether the recipient has fulfilled its administrative obligations under Section 188 of WIOA or 29 CFR 38 and duties assigned under this NDP. Although the Boards self-certify as to the level of service each workforce center may provide to customers, the EO Compliance Department monitors the Board's self-certification process and consequent accessibility by customers.

## **Supporting Documentation**

[WD 01-15, Change 1](#), *Equal Opportunity Officers and Section 504 Coordinators*

[WD 17-10](#), *Outreach and Promotional Materials, Advertising, Sponsorships, Employee Apparel, and Award Ceremonies Charged to Grant Awards and Subawards Funded through the Texas Workforce Commission*

2022 report showing Demographic Analysis by Board Area (with Census data)

# **(vi) Governor's Oversight Responsibility Regarding Recipients' Recordkeeping**

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## **Purpose**

The State of Texas complies and will continue to comply with 29 CFR 38.53 related to the Governor's oversight responsibilities regarding recipients' recordkeeping. As the Governor's designee for EO compliance measures, the State-Level EO Officer ensures that recipients collect and maintain records in alignment with 29 CFR 38.41 and are able to provide data and reports in manners prescribed by CRC.

## **Narrative**

Each recipient will permit access by the State-Level EO Officer and/or the CRC during normal business hours to its premises, data, employees, and participants, to the extent that such individuals are on the premises during the course of a complaint investigation, compliance review, or other EO monitoring activities. Whenever any information that the State-Level EO Officer and/or the CRC asks a recipient to provide is in the exclusive possession of another agency, institution, or person, and that agency, institution, or person fails or refuses to furnish the information upon request, the recipient will certify to the State-Level EO Officer and/or the CRC that it has made efforts to obtain the information and that the agency, institution, or person has failed or refused to provide it. This certification will include the name and address of the agency, institution, or person that has possession of the information, and the specific efforts the recipient made to obtain it. Considerations of privacy or confidentiality are not reasons for withholding information from the State-Level EO Officer and/or the CRC.

In collaboration with TWC's Division of Information, Innovation and Insight (I|3) and other data and statistical analyses staff within divisions across the agency, the TWC EO Compliance Department has adequate resources to

provide data and reports.

The Texas Workforce Investment Council (TWIC) compiles detailed demographic analyses to be used in program planning and improvement efforts by LWDBs, TWC, community and technical colleges, policy analysts, and other workforce system stakeholders. This information can be found online through the page Demographics for People with Disabilities.

## **Supporting Documentation**

[People with Disabilities: A Texas Profile](#) (Texas Workforce Investment Council)

[Summary sheet](#) for People with Disabilities: A Texas Profile (Texas Workforce Investment Council)

[Understanding the Need for Adult Education in Texas](#) (Texas Workforce Investment Council)

[Summary sheet](#) for Understanding the Need for Adult Education in Texas (Texas Workforce Investment Council)

[Veterans in Texas: A Demographic Study](#) (Texas Workforce Investment Council)

[Summary sheet](#) for Veterans in Texas: A Demographic Study (Texas Workforce Investment Council)

2022 Workforce Investment Opportunity Act Demographic Analysis by Board Area

# **(vii) Complaint Processing Procedures**

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## **Purpose**

The State of Texas complies and will continue to comply with the requirements of 29 CFR 38.69 through 29 CFR 38.81 related to discrimination complaint handling and processing procedures. Early informal resolution is encouraged with all complaints. TWC has developed and published complaint procedures for use by all recipients as required by 29 CFR Part 38.73 that include all elements described in 29 CFR 38.72 through WD Letter 18-07, Change 2, and attachments, *Discrimination Complaint Procedures*. In procedures related to discrimination complaint processing, the term recipient includes but is not limited to TWC, LWDBs, workforce area grant recipients, one-stop operators, service providers (including eligible training providers), and on-the-job training employers. Workforce center partners are also considered recipients to the extent that they participate in the One-Stop Service Delivery Network.

## **Narrative**

### **Who May File a Complaint?**

Any person who (1) believes they or a specific class of individuals is being subjected to discrimination on the basis of race, color, religion, sex (including pregnancy, childbirth, and related medical conditions, transgender status, and gender identity), national origin, (including limited English proficiency) age, disability, political affiliation or belief, participation in any WIOA Title I-financially assisted programs and/or activities, and/or for beneficiaries only, citizenship/status, or (2) a person or any specific class of individuals who has been or is being retaliated against as described in 29 CFR 38.19 must be given the option of filing a written complaint according to CRC regulations codified in 29 CFR 38.69 and TWC's regulations (40 TAC 842) implementing the nondiscrimination and equal opportunity provisions of WIOA. A complaint may be filed by applicants, eligible applicants, and/or participants for aid, benefits, services, or training; employees; applicants for



employment; service providers; and eligible service providers. The complaint may be filed personally, or through an authorized representative, at the local level, the state level or with the CRC.

## **How to File a Complaint**

A person may file a complaint at the local level or state level by completing and submitting a *Texas Workforce Solutions Complaint Information Form* (EO-13/EO-13S) available from the TWC EO Compliance Department, Equal Opportunity intranet website or local-level EO Officer or VR liaison. The complainant may file a complaint with the CRC by completing and submitting a *CRC Complaint Information Form* available from the State-Level EO Officer or the CRC.

The complainant may also submit a written and signed complaint narrative, at any level, containing the information required by 29 CFR 38.70, which must include:

- the complainant's name, mailing address, and, if available, email address or other means of contacting the complainant;
- the identity of the respondent;
- a description of the complainant's allegations with sufficient detail to allow the EO Officer or the CRC to determine where jurisdiction lies, the timeliness of the complaint, and whether the complaint has apparent merit; and
- the complainant's written or electronic signature or the signature of the complainant's authorized representative.

The complaint may be filed with the local-level EO Officer, with TWC by email to [EO.complaint@twc.texas.gov](mailto:EO.complaint@twc.texas.gov) or on paper at 101 East 15th Street, Room 504, Austin, Texas 78778; or with the U.S. Department of Labor, Civil Rights Center, 200 Constitution Ave. NW, Room N-4123, Washington, DC 20210.

## **Jurisdiction**

Complaints may take one of two forms: discrimination or purely programmatic. Discrimination complaints include an issue as well as a

prohibited basis and are processed according to CRC regulations codified at 29 CFR Part 38. Purely programmatic complaints do not include a prohibited basis for discrimination and are processed according to Employment and Training Administration (ETA) regulations under 20 CFR 667.600 (a), (b). Pursuant to 29 CFR Part 38, the state level EO Officer does not have jurisdiction over purely programmatic complaints.

All discrimination complaints must be submitted within 180 days of the alleged violation. An extension of the 180-day filing period may be allowed by the CRC when good cause is demonstrated by the complainant.

The State-Level EO Officer shall accept and may investigate only those discrimination complaints within their jurisdiction alleging a violation of Section 188 of the WIOA or 29 CFR Part 38 by a respondent. Complaints filed at the local level alleging discrimination on one or more of the following bases: race, color, religion, sex, national origin, age, disability, political affiliation or belief, participation in any WIOA Title I-financially assisted programs and/or activities, and/or for beneficiaries only, citizenship/status; are noted on a local-level complaint log by each recipient's designated EO Officer and retained for processing. In accordance with 29 CFR 38.43(b), all records regarding complaints and actions taken on complaints must be maintained for a period of not less than three years from the date of resolution of the complaint. At any point in the investigation of a complaint, the complainant, respondent, or the Board EO Officer may request that the parties attempt conciliation.

The customary discrimination procedures will include an *Initial Written Notice* that acknowledges receipt of the complaint and notifies that the complainant has the right to be represented in the complaint process. The *Initial Written Notice* also addresses all parties' right to an impartial decision-maker and a decision made strictly on the recorded evidence. Both the complainant and the respondent have the right to representation by an attorney or other individual of their choice, the right to present evidence, and the right to question others who present evidence. TWC is not responsible for any costs incurred by either the complainant or the respondent in obtaining representation.

The Board EO Officer may accept and investigate only those discrimination complaints within the Board's jurisdiction alleging a violation of Section 188 of the WIOA or 29 CFR Part 38 by a respondent.

In accordance with 29 CFR 38.74, if the Board EO Officer determines that the Board does not have jurisdiction over the complaint, a written *Notice of Lack of Jurisdiction* shall be provided in a timely manner to the complainant. The *Notice of Lack of Jurisdiction* shall include a statement of the reasons for the determination and a statement that the complainant may file a complaint with the CRC within 30 days of the receipt of said Notice.

If a complaint filed with the Board EO Officer alleges discrimination by a recipient on a basis that is both prohibited by Section 188 of the WIOA and by a federal law enforced by a federal grantor agency other than DOL, and the recipient is funded in whole or in part by the other federal agency, the LWDB Board EO Officer shall process the complaint using the processes of the other federal agency or refer the complaint to the other federal agency for processing under the federal agency's procedures. If referred, the complainant is notified in writing of the referral. When a complaint alleges discrimination on a basis that is prohibited by Section 188 of the WIOA but is not covered by a civil rights law enforced by the federal grantor agency (e.g., religion, political affiliation or belief, citizenship/status, and/or participation in any WIOA Title I-financially assisted programs and/or activities), the complaint must be retained under the CRC's jurisdiction and processed under 29 CFR Part 38.

## **Records of Complaints**

Complaints filed at the local level alleging discrimination on one or more of the following bases: race, color, religion, sex, national origin, age, disability, political affiliation or belief, participation in any WIOA Title I-financially assisted programs and/or activities, and/or for beneficiaries only, citizenship/status; are noted on a local-level complaint log by each recipient's designated EO Officer and retained for processing. In accordance with 29 CFR 38.43(b), all records regarding complaints and actions taken on complaints must be maintained for a period of not less than three years from the date of resolution of the complaint.

## **Initial Written Notice**

Upon receipt of a complaint, the Board EO Officer shall issue an *Initial Written Notice* that acknowledges receipt of the complaint and notifies the complainant that he or she has the right to be represented in the complaint process. Both the complainant and the respondent have the right to

representation by an attorney or other individual of their choice and the right to present evidence. Also, the *Initial Written Notice* identifies the issues accepted for investigation and those issues rejected for investigation with the reasons for each rejection and establishes a time frame for investigation of the circumstances of the complaint; and informs the complainant that he or she may choose to request participation in an Alternative Dispute Resolution (ADR) procedure as described in 40 TAC §842.12 rather than the customary discrimination complaint process and establishes a time frame for resolution.

## **Alternative Dispute Resolution (ADR)**

### ADR Process for Complaints Involving Board, Board Subcontractor, or One-Stop Partner

Each Board shall establish a written ADR procedure, and the local-level EO Officer shall be responsible for implementing the ADR procedure in the case of a complaint. If the complainant chooses to participate in a local-level ADR procedure rather than the customary discrimination complaint process, the complainant shall notify the Board EO Officer within seven calendar days of receipt of the *Initial Written Notice*. The Board EO Officer shall inform the Board of the complainant's election to use the Board's ADR procedure. The local-level EO Officer shall coordinate the scheduling of mediation with a certified mediator at a location convenient to the complainant and respondent. Within 30 days of the date of the complainant's election to participate in ADR, the recipient shall provide to TWC a copy of the *Final Agreement* or a *Notice of Failure to Reach an Agreement*.

### ADR Process for Texas Workforce Commission (TWC) Employees

The State-Level EO Officer shall inform each complainant who is a direct employee of TWC of the option to participate in the TWC internal ADR procedure, the human resources (HR) counseling program. If the complainant chooses to participate in the HR counseling program, the complainant shall notify TWC within seven calendar days of the receipt of the Statement of Issues. The HR counselor shall provide an impartial forum to attempt an informal, constructive resolution of the complaint following the counseling process set out in the TWC Personnel Manual, Section 8.1. Within 30 days of the date of the complainant's election to participate in

ADR, the HR counselor shall provide the State-Level EO Officer with a copy of the *Final Agreement* or *Notice of Failure to Reach an Agreement*.

### ADR Process for All Other Complainants

The State-Level EO Officer shall, when appropriate, inform complainants who are not direct TWC employees or who are applicants for TWC employment, and do not have a complaint involving a Board, Board subrecipient, or one-stop partner of the opportunity to participate in the State-Level ADR process. If the complainant requests participation in the State-Level ADR procedure, the complainant shall notify the state-level EO Officer within seven calendar days of receipt of the *Initial Written Notice*. The State-Level EO Officer shall coordinate the scheduling of mediation with a certified mediator at a location convenient to the complainant and respondent. Within 30 days of the date of the complainant's election to participate in ADR, the mediator shall provide to TWC a copy of the *Final Agreement* or *Notice of Failure to Reach an Agreement*.

### Process if Parties Fail to Reach an Agreement under ADR

If TWC receives a *Notice of Failure to Reach an Agreement* from the mediator, the State-Level EO Officer shall initiate an appropriate investigation into the circumstances underlying the complaint (or the complainant may file a complaint with the CRC). The State-Level EO Officer shall issue a *Notice of Final Action* in no event later than 90 days after receipt of the original complaint. For each issue raised, the *Notice of Final Action* shall include TWC's decision on the issue and an explanation of the reasons underlying the decision or a description of the way the parties resolved the issue. The *Notice of Final Action* must also include a statement that the complainant has the right to file a complaint with the CRC within 30 days of the date on which the *Notice of Final Action* is issued, if dissatisfied with TWC's final action on the complaint.

Similarly, if a local ADR process does not produce a mediated agreement, the Local-EO Officer shall conduct an appropriate investigation, shall issue a *Notice of Final Action* within the deadline, and shall state in such *Notice* an explanation of the reasons underlying the decision on each issue raised in the complaint.

## Breach of ADR Agreement

If a final agreement is reached under ADR but is breached, a party to an agreement reached under the ADR procedure may file a complaint with the CRC following the process described in 29 CFR 38.72(c)(3).

## **Notice of Final Action**

If the complainant chooses not to participate in ADR, the Board EO Officer will conduct an investigation of the complaint. At any point in the investigation of a complaint, the complainant, respondent, or the Board EO Officer may request that the parties attempt conciliation. The Board EO Officer shall issue a *Notice of Final Action* in accordance with 29 CFR 38.72 (a) within 90 days of the date the complaint is filed. For each issue raised, the *Notice of Final Action* shall include the Board EO Officer's decision on the issue and an explanation of the reasons underlying the decision or a description of the way the parties resolved the issue. In accordance with 29 CFR 38.75, the *Notice of Final Action* shall also include a statement that the complainant has the right to file a complaint with the CRC within 30 days of the date on which the *Notice of Final Action* is issued if dissatisfied with the Board EO Officer's final action on the complaint.

In accordance with 29 CFR 38.76, if by the end of 90 days from the date on which the complainant filed the complaint, the Board EO Officer has failed to issue a *Notice of Final Action*, the complainant or the complainant's authorized representative may file a complaint with the CRC within 30 days of the expiration of the 90-day period. An extension of the 30-day filing period may be allowed when good cause is demonstrated to the CRC by the complainant or if TWC fails to inform a complainant of the right to file with the CRC in the *Notice of Final Action*.

As a part of the *Notice of Final Action*, TWC may impose any corrective or remedial action which may be imposed by the CRC and/or may require that the respondent complete one or more of the following items: development of an appropriate EO policy, removal of any discriminatory information from the complainant's records, and/or delivery of EO training to appropriate staff members. Corrective actions and sanctions are discussed in Element 9 of this document. The respondent of the complaint shall inform TWC in writing within ten days of receipt of the *Notice of Final Action* that it has accepted resolution of the complaint and that it will complete the required

corrective actions listed in said Notice.

If TWC finds a recipient to be in violation of the nondiscrimination and equal opportunity provisions of Section 188 of the WIOA or such entity has not accepted a suggested conciliation agreement, TWC may impose sanctions pursuant to established rules in the Texas Administrative Code which are discussed in the last section of this document.

## **Supporting Documentation**

[WD 18-07, Change 2](#), Discrimination Complaint Procedures

Attachment to WD 18-07, Texas Workforce Solutions [Discrimination Complaint Procedures](#)

Attachments to WD 18-07, Complaint Information Forms, [EO-13 \(English\)](#) and [EO-13S \(Spanish\)](#)

Chapter 8, TWC Personnel Manual

# **(viii) Governor's Oversight and Monitoring Responsibilities for State Programs**

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## **Purpose**

The State of Texas complies and will continue to comply with the requirements of 29 CFR 38.51 through 38.53 related to the Governor's oversight and monitoring responsibilities. All WIOA Title I-financially assisted programs and/or activities in the State of Texas are monitored for compliance with the requirements of Section 188 of the WIOA; Title VI of the Civil Rights Act of 1964, as amended; and Section 504 of the Rehabilitation Act of 1973, as amended. Nondiscrimination and equal opportunity policies are developed and communicated to all recipients through the Combined State Plan and the regulations and directives TWC adopted to implement WIOA Nondiscrimination and Equal Opportunity Rules. Title I-financially assisted programs and/or activities are operating in a nondiscriminatory manner; Texas's monitoring regimen includes an analysis of the data and records collected by the recipient.

## **Narrative**

In accordance with 29 CFR 38.51, the State-Level EO Officer as the Governor's designee is responsible for oversight and annual monitoring of all WIOA Title I-financially assisted State Programs to determine compliance with the nondiscrimination and equal opportunity provisions of Section 188 of the WIOA and, negotiating, where appropriate, with a recipient to secure voluntary compliance when noncompliance is found. Recipients will provide, in a timely manner, any information the State-Level EO Officer and TWC Equal Opportunity Compliance Department considers necessary to conduct a compliance review.

In Texas, the first compliance layer is that the Boards have the obligation



to self-monitor and to self-correct. TWC provides two tools for each Board to use in their internal efforts. The general tool is the "Texas Workforce Commission Subrecipient and Equal Opportunity Monitoring WIOA Section 188 Review Checklist" which is used to cover WIOA Nondiscrimination and Equal Opportunity programmatic compliance. For assessing disability accessibility issues, TWC provided Boards with the "Texas Workforce Commission ADA Monitoring Checklist for Texas Workforce Facilities Based on the 2012 Texas Accessibility Standards" (TAS). This second item, the TAS checklist, is promulgated by the Texas Department of Licensing and Regulation (TDLR) – a separate state agency. TDLR indicates that the 2012 checklist is currently being updated, and TWC will use the new form when it becomes available. If the Board's internal efforts reveal accessibility shortcomings, they complete a "Facility Compliance Deficiency Corrective Plan," and provide a copy to the EO Compliance Department at TWC.

In addition to the Board's self-monitoring protocols, the TWC EO Compliance Department (with assistance from the TWC Subrecipient Monitoring Department) conducts compliance reviews of recipients to determine compliance with nondiscrimination and equal opportunity provisions of Section 188 of the WIOA. These reviews are designed to provide assurance regarding equal opportunity for all customers through the development, administration and enforcement of the Texas workforce system's policies and procedures under Title I, Section 188 of the Workforce Innovation and Opportunity Act, which prohibits discrimination in programs and activities that receive federal financial assistance. The findings and written reports resulting from compliance reviews are made available to the reviewed recipient within 60 days of the review.

Annual Board monitoring occurs through a combination of desk audits and on-site reviews. However, additional targeted compliance reviews may also be prompted by request, through a complaint or series of complaints, and/or by an apparent or observed trend of disparity.

Compliance reviews assess each recipient's compliance with administrative obligations of 29 CFR Part 38, the federal regulations related to EO Officers, notice and communication, assurances, equal access, data and information collection and maintenance, complaint processing procedures, and other related information.

Compliance reviews evaluate recipients' EO performance by examining the

following items:

- documentation of EO monitoring/evaluation reviews of recipients of WIOA Title I financial assistance (including monitoring assurances, program accessibility, and architectural accessibility);
- data analyses of records and data kept by the recipient, including analyses by race/ethnicity, sex, limited English proficiency, age, and disability status, LEP status and preferred language;
- an investigation of any significant differences identified regarding participation in the programs, activities, or employment provided by the recipient, to determine whether differences are a result of discrimination;
- recommendation of corrective actions for violations noted by a recipient during its monitoring reviews; and
- assurance of policy development, communication, and training.

EO policies and procedures establish the process for conducting an EO compliance review. The EO Compliance Department will review prior summary materials, local-level self-monitoring reports, policies and procedures, physical accessibility checklists and complaints for previous findings or discriminatory trends during desk audits. Also, the EO Compliance Department will review documents the Board has submitted in response to a request from the TWC Equal Opportunity Monitoring Department upon notification and scheduling of the EO compliance review.

For the on-site review, written notice is provided to the LWDB's Executive Director. The local-level EO Officer then notifies all pertinent subrecipients, suppliers, and service providers. EO staff meet with recipient representatives to discuss the on-site monitoring agenda, address concerns identified during the desk audit, and answer questions. Areas to be covered during the on-site or desk audit reviews may include, but are not limited to:

- a review of participant files for a copy of the EO Notice;
- physical accessibility of services to persons with disabilities;
- equal opportunity posters and bulletin boards to determine if the

name of the local-level EO Officer is posted and if the required EO Notice is properly displayed in the workforce center;

- designated complaint takers for knowledge of complaint-taking procedures;
- the reception and switchboard areas to ensure all applicants are treated professionally and courteously and are provided with the same information and opportunities for service;
- storage of disability-related and medical information;
- review of contract documents for assurances;
- review of outreach materials for appropriate notice and communication requirements;
- interviews with center managers and other frontline staff regarding service delivery, data analyses, policies and procedures related to serving individuals who are limited English proficient, individuals with disabilities, and other target populations as deemed necessary based on the local demographics; and
- auxiliary aids and assistive technology available at the workforce center.

The results of the on-site visit are documented using the TWC monitoring tools (which are the Equal Opportunity Survey Form, the Equal Opportunity Onsite Evaluation, and the Equal Opportunity Document Analysis). Immediately following the on-site compliance review, a debriefing is held with the Executive Director of the LWDB, the local-level EO Officer, and other pertinent workforce center staff to discuss findings and clarify areas in question.

Recipients are expected to ensure that all staff are knowledgeable of EO laws and regulations and of how these regulations impact the employees' job duties. However, the EO Compliance Department can provide training on any topic related to equal opportunity upon request.

All documentation submitted by the Board is examined by the EO Compliance Department. Once the compliance review has been completed,

the TWC Equal Opportunity Compliance Department prepares a written report of EO findings to be included in the Board monitoring report. Findings detail those areas in which the Board and/or workforce center(s) are non-compliant with equal opportunity and nondiscrimination provisions of WIOA Section 188 and Section 504. The report may also make recommendations for corrective actions to occur within 30 working days from when the report is issued. The EO Compliance Department and the local-level EO Officer maintain communication until all findings have been corrected.

## **Corrective Actions and Sanctions**

The State of Texas complies and will continue to comply with all requirements related to corrective actions and sanctions. Chapter 802 of the Texas Administrative Code, Integrity of the Texas Workforce System, outlines the Agency's responsibility and authority regarding corrective actions and sanctions.

The TWC Equal Opportunity Compliance Department conducts reviews of WIOA recipients to ensure compliance with nondiscrimination and equal opportunity provisions and negotiates with recipients to assure voluntary compliance when a violation is found. To this end, TWC has established procedures for obtaining prompt and appropriate corrective actions or, as necessary, applying sanctions when non-compliance is established.

Supplemental compliance reviews (in addition to standard annual monitoring) can be initiated at the discretion of the State-Level EO officer, or may be prompted by request, through a complaint or series of complaints, or by an apparent or observed trend of disparity. The subsequent compliance review report advises the recipient of the preliminary findings, the necessary corrective actions required to achieve compliance, and a time frame by which a response must be received from the recipient.

Corrective action violations vary in severity from a technical violation to a discrimination violation. Technical violations may include, but are not limited to, failure to include required language in assurances and failure to display EO posters. In Texas, corrective actions for technical violations are tailored specifically to each finding and designed to correct the problem completely. When appropriate, the corrective actions also include training

for the staff responsible for implementation. For each corrective action, a time frame is established by the recipient, and TWC determines the minimum time necessary to correct the violation completely.

Discrimination violations may include, but are not limited to, findings of disparate treatment, disparate impact, and failure to provide a reasonable accommodation. Corrective actions involving discrimination may include, but are not limited to, corrective, curative, or preventive requirements designed to prevent a recurrence of the discrimination; nondiscriminatory referral; cessation provisions; and equitable relief. Equitable relief for discrimination violations, includes, as appropriate: back pay (which must not accrue from a date more than two years before the filing of a complaint or the initiation of a compliance review or other monetary relief); hiring or reinstatement; retroactive seniority; promotions; benefits or other services determined to be discriminatorily denied; and such other remedial or affirmative relief as TWC or the CRC deems necessary, which may include but is not limited to, outreach, recruitment and training designed to ensure equal opportunity.

Monetary relief may not be paid from state or federal funds.

Where TWC's Equal Opportunity Compliance Department has determined a violation of the nondiscrimination and equal opportunity provisions of WIOA has occurred below the State level, TWC's Executive Director and the violating recipient(s) must be so notified through the issuance of a Letter of Findings, Notice to Show Cause or Initial Determination, as appropriate.

### Imposition of Corrective Actions and Corrective Action Plans

Specific guidelines for imposing corrective actions and corrective action plans based on Equal Opportunity non-compliance(s), as with other non-compliances, can be found in the Texas Administrative Code (TAC), Title 40, Part 20, Chapter 802, Subchapter G, Corrective Actions, which provides:

#### RULE §802.121 Imposition of Corrective Actions and Corrective Action Plans

- (a) At any time, the Agency may impose corrective actions for failure by a Board, AEL grant recipient, or Agency grantee to ensure compliance with the following:

- (1) one or more contracted performance measures;
  - (2) one or more contract provisions; or
  - (3) one or more of the items listed in §802.102(c) of this chapter.
- (b) The Agency may impose corrective actions for failure by a Board, AEL grant recipient, or Agency grantee to appropriately oversee of the delivery of services and ensure the effective and efficient use of funds.
- (c) Failure to cooperate and comply with the Agency's performance improvement actions, including technical assistance plans, may subject a Board, AEL grant recipient, or Agency grantee to corrective actions.
- (d) The Agency may impose, in nonsequential order, the following corrective actions on a Board, AEL grant recipient, or Agency grantee:
- (1) Intent to Sanction
  - (2) Level-One Sanction
  - (3) Level-Two Sanction
  - (4) Level-Three Sanction
- (e) The Agency may impose a higher level of sanction on a Board, AEL grant recipient, or Agency grantee, if a sanction is currently imposed when another sanctionable act occurs or is discovered.
- (f) Corrective Action Plan. To assist in correcting any deficiencies, a Board, AEL grant recipient, or Agency grantee upon whom an intent to sanction or a sanction is imposed must enter into a corrective action plan. A corrective action plan is developed by the Agency and may include the elements of a technical assistance plan, as outlined in §802.104(b) of this chapter. In addition, the Agency may require:
- (1) participation in technical and quality assurance activities;
  - (2) mandatory participation in training;

- (3) on-site visits by the Agency to oversee and assist with daily operations of a Board, AEL grant recipient, or Agency grantee;
- (4) submission of additional or more detailed financial or performance reports;
- (5) modification of the Board's local plan;
- (6) issuing a notice of intent to revoke all or part of the affected local plan;
- (7) designation as a high-risk Board, AEL grant recipient, or an Agency grantee requiring additional monitoring visits;
- (8) appearances by the Board's executive director, other administrative officer, the Agency grantee's executive leadership, or the AEL grant recipient's chief executive officer to report on activities and progress in Commission meetings until performance is satisfactory;
- (9) meetings with the workforce area's chief elected officials, Board chair, Board members, Board executive director, AEL grant recipient's chief executive officer, AEL consortium members, or Agency grantee's executive leadership;
- (10) formal Agency presentation to chief elected officials, Board members, AEL grant recipient's chief executive officer, AEL consortium members, or Agency grantee's executive leadership;
- (11) Agency oversight and management of problem situations, such as the appointment of a steward;
- (12) Agency approval of specified Board, AEL grant recipient, or Agency grantee actions (i.e., prohibition against entering into specific contracts or engaging in certain activities without explicit prior approval of the Agency);
- (13) prohibition against a Board or AEL grant recipient using designated workforce service providers or AEL service providers, including state agencies and Workforce Solutions Office operators;

- (14) payment by reimbursement only, with required supporting documentation;
- (15) delay, suspension, or denial of contract payments;
- (16) reduction or deobligation of funds;
- (17) ineligibility for additional discretionary or other funds, including incentive awards;
- (18) contract cancellation or termination; and
- (19) other actions deemed appropriate by the Agency to assist the Board, AEL grant recipient, or Agency grantee in correcting deficiencies.

#### RULE §802.122 Intent to Sanction

- (a) The Agency may issue an intent to sanction to set forth:
  - (1) a corrective action plan and performance review and assistance activities;
  - (2) a specific timeline for the implementation of the corrective action plan by a Board, AEL grant recipient, or Agency grantee; and
  - (3) an opportunity to cure the sanctionable acts.
- (b) There shall be no appeal to an intent to sanction.

### Sanctions

Regarding sanctions, RULE §802.123 of TAC states:

- (a) Level-One Sanction. The Agency may impose a level-one sanction on a Board, AEL grant recipient, or Agency grantee for sanctionable acts. Sanctionable acts that occur during the program, grant, fiscal, contract, or calendar year include, but are not limited to, the following:
  - (1) failure to submit timely and accurate required financial or performance reports;



- (2) failure to take corrective actions to resolve findings identified during monitoring, investigative, or program reviews, including failure to comply with a technical assistance plan developed by the Agency;
  - (3) failure to rectify or resolve all independent audit findings or questioned costs within required time frames;
  - (4) failure to submit required annual audits;
  - (5) breach of administrative and service contract requirements;
  - (6) failure to retain required service delivery and financial records; or
  - (7) failure to meet the target on any contracted performance measure by more than 10 percent of target.
- (b) Level-Two Sanction. The Agency may impose a level-two sanction on a Board, AEL grant recipient, or Agency grantee for sanctionable acts. Sanctionable acts that occur during the program, grant, fiscal, contract, or calendar year include, but are not limited to, the following:
- (1) failure to rectify a level-one sanction within six months of notice;
  - (2) committing a second sanctionable act;
  - (3) failure to rectify reported threats to health and safety of program participants within 30 days of notice. Rectifying health and safety may include investigating a complaint, taking appropriate corrective actions, or making referrals to appropriate authorities;  
or
  - (4) failure to meet the target on any contracted performance measure by more than 25 percent of target.
- (c) Level-Three Sanction. The Agency may impose a level-three sanction on a Board, AEL grant recipient, or Agency grantee for sanctionable acts. Sanctionable acts that occur during the program, grant, fiscal, contract, or calendar year include, but are not limited to, the following:

- (1) failure to rectify a level-one sanction within one year of notice;
- (2) failure to rectify a level-two sanction within six months of notice;
- (3) committing multiple sanctionable acts;
- (4) failure to rectify reported threats to health and safety of program participants within 60 days of notice. Rectifying health and safety may include investigating a complaint, taking appropriate corrective action, or making referrals to appropriate authorities; or
- (5) failure to meet the target on any contracted measure by more than 25 percent of target for two consecutive years.

#### Rule §802.124 Penalties for Noncompliance with Requirements

- (a) The Agency may impose penalties on a Board, AEL grant recipient, or Agency grantee based on the following criteria as determined appropriate by the Agency given the totality of the circumstances surrounding the occurrence of the sanctionable act or acts:
  - (1) Severity, nature, duration, and extent;
  - (2) Previous occurrences of sanctionable acts; and
  - (3) Efforts by the Board, workforce service provider, AEL grant recipient, AEL service provider, or Agency grantee to prevent the occurrence of the sanctionable act, including efforts to:
    - (A) obtain technical assistance, training, or other assistance from the Agency;
    - (B) resolve monitoring findings; and
    - (C) prevent potential sanctionable acts.
- (b) The Agency may impose penalties for sanctionable acts listed in this subchapter. Notwithstanding the list of sanctionable acts appearing after each specific level of sanction in §802.123 of this subchapter, the Agency may assign a higher or lower sanction level based on the severity or mitigating circumstances surrounding the sanctionable acts.

- (c) The Commission may recommend to TWIC pursuant to Texas Government Code, Chapter 2308, that one or more of the following be imposed on Boards:
  - (1) A reorganization plan under Texas Government Code §2308.268 for the workforce area;
  - (2) A restructuring of the Board, including decertification of the current Board and appointment and certification of a new Board;
  - (3) A merger of the workforce area into one or more other workforce areas; or
  - (4) Any other penalty deemed appropriate by the Commission.
- (d) More than one corrective action may be imposed in response to one occurrence of a sanctionable act. The corrective actions imposed for one or more occurrences of sanctionable acts may correlate with the sanction level imposed on a Board, AEL grant recipient, or Agency grantee.
- (e) Failure by a Board, AEL grant recipient, or Agency grantee to complete the corrective actions described in this subchapter within the specified time limits may result in the Agency imposing penalties under this subchapter and withholding contract payments to the Board, AEL grant recipient, or Agency grantee.
- (f) Penalties for Second-Year WIA Nonperformance. If a Board fails to meet its targets on 25 percent of its contracted measures by more than 20 percent of target for two consecutive program years, the Commission shall review the performance deficiencies and shall make a recommendation to TWIC that it impose a reorganization plan for the workforce area. The Commission's recommendation to TWIC for reorganization of a workforce area may include one or more of the corrective actions or penalties included in this subchapter. Notwithstanding this subsection, the Commission may take other action deemed appropriate as consistent with federal law.
- (g) Penalties for Failures Regarding the One-Stop Service Delivery Network. Failure of a Board to ensure the continued operation of a one-stop service delivery network as required by WIA §121 and

Chapter 801, Subchapter B, One-Stop Service Delivery Network of this title, including failure to properly certify Workforce Solutions Offices as defined in §801.24 of this title, may result in the imposition of penalties as provided in this subchapter, and the Agency's withholding of payment for any administrative expenses until the Board demonstrates to the satisfaction of the Agency that all of the required elements of a one-stop service delivery network are operational.

#### RULE §802.125 Sanction Determination

- (a) The director of Agency's Workforce Development Division determines whether a sanction shall be imposed, including whether it is appropriate to impose a sanction level on the Board, AEL grant recipient, or Agency grantee and whether it is appropriate to assign a penalty.
- (b) The Commission shall work in concert with TWIC, as appropriate, to impose sanctions as required by Texas Government Code §2308.268 and §2308.269.
- (c) The Agency shall send a written notice of sanction determination (sanction determination) to the following:
  - (1) Board:
    - (A) The Board's executive director or administrative officer;
    - (B) The Board's chair; and
    - (C) The lead chief elected official of the workforce area; or
  - (2) The AEL grant recipients' or Agency grantees' executive leadership.
- (d) The sanction determination date of notice shall be the date the sanction determination is sent by certified mail. All sanction determinations shall be sent by electronic transmission and by certified mail, return receipt requested:
- (e) The sanction determination shall include the following information:

- (1) the sanctionable act upon which the sanction was based;
  - (2) the sanction level in which the Board, AEL grant recipient, or Agency grantee is placed and the conditions under which the sanction may be removed;
  - (3) the penalty and the effective date of the penalty;
  - (4) the corrective action required, including the timeline for completing the corrective action; and
  - (5) the technical assistance contact from the Agency or other entity to assist in completing the corrective action.
- (f) The Agency shall send the sanction determination at least 10 working days in advance of the effective date of the sanction.

## **Guidelines for Non-Compliance, Corrective Actions and Sanctions**

### I. Practices and Policies

<b><i>Area of Non-Compliance</i></b>	<b><i>Corrective Action</i></b>	<b><i>Pre-Sanction and Sanction</i></b>
<p>A. Policies or procedures that discriminate, or have the effect of excluding identifiable groups of individuals or denying the administration of benefits, participation in, employment, or other activities in connection with the Workforce Innovation and Opportunity Act.</p>	<ol style="list-style-type: none"> <li>1. Technical Assistance and Training</li> <li>2. Elimination or modification of policies, practices and procedures that have been found to be discriminatory within a time period specified by the State</li> </ol>	<ul style="list-style-type: none"> <li>• Written warning of non-compliance</li> <li>• Recommendations regarding sanctions are forwarded to the Director of Workforce Development for appropriate action</li> </ul>
<p>B. Programs, activities, or services that are inaccessible to disabled or limited English-speaking individuals.</p>	<ol style="list-style-type: none"> <li>1. Technical Assistance</li> <li>2. Identification of inaccessible features, and modification of inaccessible features, within time frame given by the State</li> </ol>	<ul style="list-style-type: none"> <li>• Written warning of non-compliance</li> <li>• Recommendations regarding sanctions are forwarded to the Director of Workforce Development for appropriate action</li> </ul>
<p>C. Non-existent, incomplete, or inadequate accessibility assessment tool on file as required by Section 504 of the Rehabilitation Act of 1973, as amended and the Americans with Disabilities Act of 1990, as amended.</p>	<ol style="list-style-type: none"> <li>1. Acquisition of technical assistance materials</li> <li>2. Production of such a document within a time period specified by the State</li> </ol>	<ul style="list-style-type: none"> <li>• Written warning of non-compliance</li> <li>• Recommendations regarding sanctions are forwarded to the Director of Workforce Development for appropriate action</li> </ul>
<p>D. Policies, practices, or procedures which are not in compliance with 29 CFR 38 or other civil rights legislation.</p>	<ol style="list-style-type: none"> <li>1. Acquisition of technical assistance materials</li> <li>2. Immediate modification or elimination of non-compliant policies, practices, and procedures within a time period specified by the State</li> </ol>	<ul style="list-style-type: none"> <li>• Written warning of non-compliance</li> <li>• Recommendations regarding sanctions are forwarded to the Director of Workforce Development for appropriate action</li> </ul>

<b>Area of Non-Compliance</b>	<b>Corrective Action</b>	<b>Pre-Sanction and Sanction</b>
E. Non-existence of a staff analysis by race, sex and age.	1. Completion of staff analysis within 30 days of receipt of written report of non-compliance	<ul style="list-style-type: none"> <li>• Written warning of non-compliance</li> <li>• Recommendations regarding sanctions are forwarded to the Director of Workforce Development for appropriate action</li> </ul>
F. Lack of efforts to use and support minority and women enterprises when procuring goods and services.	1. Increased efforts to select and support minority and women vendors through contact and communication with the Civil Rights Center within 30 days of a Compliance Review report	<ul style="list-style-type: none"> <li>• Written warning of non-compliance</li> <li>• Recommendations regarding sanctions are forwarded to the Director of Workforce Development for appropriate action</li> </ul>

## II. Nondiscrimination Plan

<b>Area of Non-Compliance</b>	<b>Corrective Action</b>	<b>Pre-Sanction and Sanction</b>
A. Non-submission of an approved Nondiscrimination Plan.	1. Prepare and submit a Nondiscrimination Plan. This plan should be submitted for approval within 60 days of the written receipt of the report of non-compliance	<ul style="list-style-type: none"> <li>• Written warning of non-compliance</li> <li>• Recommendations regarding sanctions are forwarded to the Director of Workforce Development for appropriate action</li> </ul>
B. Non-provision of services to individuals or substantial segments most in need.	<ol style="list-style-type: none"> <li>1. Determine substantial segments which are most in need.</li> <li>2. Prepare a plan detailing the methods that will be used to achieve and maintain compliance.</li> <li>3. Submit the NDP to the State EO Officer within 30 days of receipt of the written report of non-compliance.</li> <li>4. Take immediate actions towards achieving compliance during the preparation of the NDP.</li> <li>5. Upon submission of the NDP, implement the NDP in order to achieve compliance</li> </ol>	<ul style="list-style-type: none"> <li>• Written warning of non-compliance</li> <li>• Recommendations regarding sanctions are forwarded to the Director of Workforce Development for appropriate action</li> </ul>

<b>Area of Non-Compliance</b>	<b>Corrective Action</b>	<b>Pre-Sanction and Sanction</b>
C. Maintaining complaint procedures not in compliance with 29 CFR 38.	1. Obtain technical assistance and take necessary steps to achieve compliance	<ul style="list-style-type: none"> <li>• Written warning of non-compliance</li> <li>• Recommendations regarding sanctions are forwarded to the Director of Workforce Development for appropriate action</li> </ul>
D. Failure to comply with equal opportunity directives issued by the State EO Officer and with applicable laws and regulations.	1. Take immediate action to comply within time frame specified by the State EO Officer	<ul style="list-style-type: none"> <li>• Written warning of non-compliance</li> <li>• Recommendations regarding sanctions are forwarded to the Director of Workforce Development for appropriate action</li> </ul>
E. Failure to carry out oversight responsibilities by monitoring equitable service performance of its service providers.	1. Require immediate implementation of oversight and written report of the results to the State EO Officer within 30 days of the receipt of the written report of non-compliance	<ul style="list-style-type: none"> <li>• Written warning of non-compliance</li> <li>• Recommendations regarding sanctions are forwarded to the Director of Workforce Development for appropriate action</li> </ul>
F. Failure to collect and maintain records as required in 29 CFR 38.	1. Take immediate action to comply within the time frame specified by the State EO Officer	<ul style="list-style-type: none"> <li>• Written warning of non-compliance</li> <li>• Recommendations regarding sanctions are forwarded to the Director of Workforce Development for appropriate action</li> </ul>

## Supporting Documentation

[WD 24-11, Change 1](#), *Reporting Negative Incidents Involving Texas Workforce System Customers*

Texas Workforce Commission Subrecipient and Equal Opportunity Monitoring WIOA Section 188 Review Checklist

Texas Workforce Commission ADA Monitoring Checklist for Texas Workforce Facilities Based on the 2012 Texas Accessibility Standards (TAS)

Equal Opportunity Survey Form



Equal Opportunity Onsite Evaluation

Equal Opportunity Document Analysis

Facility Compliance Deficiency Corrective Plan

End of document