

WIA Eligible Training Provider Certification Rules for Adoption.

ADOPTED RULE WITH PREAMBLE TO BE SUBMITTED TO THE TEXAS REGISTER. THIS DOCUMENT WILL NOT HAVE ANY SUBSTANTIVE CHANGES BUT IS SUBJECT TO FORMATTING CHANGES AS REQUIRED BY THE TEXAS REGISTER

The Texas Workforce Commission (Commission) adopts amendments to §§841.31, 841.32, 841.34, 841.41, 841.44, and 841.46 and adopts the repeal of and new §§841.40, 841.43, 841.45, and 841.47 regarding the Eligible Training Provider Certification System (ETPS) required under the Workforce Investment Act of 1998, without changes as published in the August 10, 2001 issue of the *Texas Register* (26 TexReg 5992). The text of these rules will not be republished. Sections 841.38 and 841.39 are adopted with changes to the text as published in the August 10, 2001 issue of the *Texas Register* (26 TexReg 5992). The text of §841.38 and §841.39 will be republished.

A key goal of the federal Workforce Investment Act (WIA) of 1998 (42 U.S.C.A. Section 2801 et seq.) is to improve the effectiveness and efficiency of federally-funded job training programs. WIA recognized Texas state statutes regarding the workforce development system as prior consistent state law. Specifically, the state statutes are grandfathered under the provisions of WIA and are codified primarily in Texas Government Code Chapter 2308 and Texas Labor Code Chapter 302. These state laws create the foundation upon which workforce reform in Texas regarding employment and training service delivery was built. The ETPS is an important component of the workforce reform and employment and training services in Texas.

The Commission has continued to work closely with representatives of the training provider community, Boards and partner agencies to provide formal and informal opportunities to improve the ETPS. The Commission oversees the operational aspects of the Texas workforce development system to ensure compliance with the WIA while providing options for the Boards and the training provider community. The Commission continues to seek options for streamlining processes, including those for the certification process and for performance reporting by eligible training providers. A key objective is to maximize participant access to education and training options, while minimizing providers' reporting burdens.

The purpose of Subchapter C is to address the ETPS as required under WIA. Changes are adopted for the purposes of streamlining the ETPS, reflecting changes necessitated by the implementation of the automated, Internet-based ETPS and to allow Boards discretion to permit the ETPS and the use of Individual Training Accounts (ITAs) to apply to other workforce services funded through the Commission. The language in many of the sections remains the same with the following exceptions:

Section 841.31 addresses the scope and coverage of this subchapter. The ETPS and the use of ITAs to secure and pay for adult training services are primary service delivery mechanisms under the WIA. A sentence is added that acknowledges the Boards' option to use these

mechanisms for adult training services funded by Choices, Food Stamp Employment and Training (FS E&T), Welfare-to-Work (WtW), Trade Adjustment Assistance (TAA) and North American Free Trade Agreement-Transitional Adjustment Assistance (NAFTA-TAA).

Section 841.32 addresses training services. The changes to the language include adding a sentence to subsection (a) that acknowledges the expanded coverage of the rule to cover adult training services funded by Choices, FS E&T, WtW, TAA and NAFTA-TAA.

Section 841.34 addresses ITAs. The changes include adding a subsection (c) that acknowledges the expanded coverage of the rule to cover adult training services funded by Choices, FS E&T, WtW, TAA and NAFTA-TAA.

Section 841.38 addresses the initial certification process for exempt providers. A change is made in the first sentence to clarify Board responsibilities for developing local requirements, rather than a written application, for the submission of initial eligibility applications for exempt programs. Technical corrections have also been made to this section.

Section 841.39 addresses the alternative application for initial eligibility determination by non-exempt training providers. Changes are made to subsection (b) to address modifications in application requirements due to conversion to the automated, Internet-based ETPS and to specify the exemption of providers that are subject to Texas or another state's regulation or audit from the requirement to submit financial stability documentation. Changes are also made to subsection (c) to remove the requirement that training provider applicants provide performance information regarding the percentage of all individuals participating in the applicable program who obtained unsubsidized employment in an occupation related to the program conducted. Technical corrections have also been made to this section.

Section 841.40 addresses the submission of an initial eligibility application. Language is added to address the required use of the automated, Internet-based ETPS for application submission and review and to address provider compliance with state law.

Section 841.41 addresses initial eligibility determination. Language in subsection (b) related to a mandatory six-month waiting period for reapplication after Board denial of an initial eligibility application is deleted in order to provide additional flexibility with regard to the development of local appeals policy.

Section 841.43 addresses application for subsequent eligibility determination. The option to request a specific certification date is removed since it is not applicable to the subsequent eligibility determination process. Language is added to address the required use of the automated, Internet-based ETPS for application submission and review and to address provider compliance with state law. Language is added to allow for adjusting the certification renewal period if an appeal is approved to ensure that the period of certification is one year in length.

Section 841.44 addresses the determination of subsequent eligibility. In subsection (e) language related to a mandatory six-month waiting period for reapplication after Board denial

of an initial eligibility application is deleted in order to provide additional flexibility with regard to the development of local appeals policy.

Section 841.45 addresses the annual adoption of standards of performance. Changes are made to clarify the process for annual adoption and issuance of performance standards.

Section 841.46 addresses the requirements for submission and retention of verifiable program-specific performance information. The requirement that performance information be submitted on a quarterly basis is deleted since submission of required data is not subject to this stringent timeline and the subsections are re-lettered accordingly.

Section 841.47 addresses the certified provider list and the name is modified to reflect that the training provider list includes "eligible" training providers. Language related to Board submission of certified provider lists, and applicable performance and cost data, is deleted to reflect process changes related to the conversion to the automated, Internet-based ETPS. The remaining subsections are re-lettered accordingly.

The remaining rules in Subchapter C, §841.48 and §841.49, contain no changes to the prior rules.

Comments were received from the Coastal Bend Local Workforce Development Board. Some comments were for the rule, others recommended changes, or posed questions regarding the rule. The summary of the comments and the related responses are as follows:

Comment: Regarding §841.39(b)(15), Alternative Application for Initial Eligibility Determination, the commenter recommended that paragraph (15) be deleted since a description of employer support of the program is not explicitly required as part of the automated Initial Eligibility Application for non-exempt programs.

Response: The Commission agrees and therefore paragraph (15) will be deleted. With the implementation of the automated Eligible Training Provider Certification System, this application item is no longer specifically required. Employer support must be demonstrated as part of the Board's review process and local protocols, as specified in §841.32(b). This provision requires that training services be directly linked with employment opportunities on the Board's list of demand occupations and that each Board develop a process for considering eligible participants' requests for training in occupations not on the demand list. Further, if the skill sets acquired after successful completion of the training program relate to occupations not currently on the Board's demand list, §841.39(b)(8) requires that each Board develop a process for considering evidence from employers demonstrating that the occupations are in demand.

Comment: Regarding §841.41, Initial Eligibility Determination, the commenter recommended deleting the requirement in subsection (a), which specifies that a Board shall provide a written notice of determination of acceptance or rejection of an Initial Eligibility Application within ninety (90) calendar days of the receipt of the application. The recommendation makes

reference to the e-mail notification system, which provides notice of certain application status changes to the affected training provider and or Board contact, as applicable.

Response: The Commission disagrees with deleting the reference in subsection (a) because the e-mail notification system was established to generate appropriate notices on a daily basis and the system does serve to meet the written notification requirements specified in subsection (a). However, if the applicable training provider does not have an e-mail address or if a message is undeliverable due to technical problems, the Board retains the responsibility to provide notification of the specified actions.

Comment: Regarding §841.43, Application for Subsequent Eligibility Determination, the commenter recommended modifying the proposed addition of subsection (d), which, as proposed, would allow the Agency to adjust the certification period if a subsequent eligibility application is denied and later approved on appeal. The commenter recommended that the program retain certification status pending resolution of the appeal.

Response: The Commission does not agree that the program should retain certification status pending the resolution of an appeal for the following reason. In accordance with WIA §122, the certification is granted for a one year period, subject to Board and Agency review and approval. If an application for subsequent or continuing eligibility is denied by the Board or the Agency, the certification period currently in effect would continue until the expiration date, unless the program is withdrawn by the provider or the Board, or removed for cause by the Agency. If any of those actions occur prior to resolution of the appeal, certification would lapse. If the subsequent eligibility application is later approved on appeal, the certification period would be adjusted, as proposed, to ensure that the new certification period is one year in length. Because of the specific WIA language in WIA §122, which requires each certification to end after one year, the Agency intends to continue taking steps to remind and notify Eligible Training Providers in advance of the importance of meeting the deadlines for submitting subsequent applications. One of the goals of the Eligible Training Provider System is to encourage a smooth transition from one certification period to the next to the extent feasible. The Agency also intends to continue expediting the appeal process as much as is feasible to resolve matters as quickly as possible.

Comment: Regarding §841.44, Determination of Subsequent Eligibility, the commenter recommended deleting the requirement in subsection (d), which specifies that a Board shall provide a written notice of determination of acceptance or rejection of an Initial Eligibility Application within thirty (30) calendar days of the receipt of the application. The commenter makes reference to the e-mail notification system, which provides notice of certain application status changes to the affected training provider and or Board contact, as applicable.

Response: The Commission disagrees. Although the e-mail notification system was established to generate appropriate notices on a daily basis and the system does serve to meet the written notification requirement specified in §841.44(d) if a message is undeliverable either due to technical problems or if the applicable training provider does not have an e-mail address, the Board retains the responsibility to provide notification of the specified actions.

The amendments and new sections are adopted under Texas Labor Code §301.061 and §302.002, which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The adopted amendments and new sections affect the Texas Labor Code, Title 4.

SUBCHAPTER C. ELIGIBLE TRAINING PROVIDER CERTIFICATION

§841.31. Scope and Coverage

This subchapter establishes rules governing the state's eligible training provider certification system as required by WIA §122 and is applicable to providers of training services for adults and dislocated workers. At the discretion of the Board, the Eligible Training Provider Certification System (ETPS) may be applied to the delivery of training services funded through the Commission including Choices, Food Stamp Employment and Training (FS E&T), Welfare to Work (WtW), Trade Adjustment Assistance (TAA) and North American Free Trade Agreement-Transitional Adjustment Assistance (NAFTA-TAA).

§841.32. Training Services

- (a) As used in this subchapter, training services shall mean those services which are described in WIA §134(d)(4)(D) and are provided by an LWDB to eligible adults and dislocated workers. At the discretion of the Board, the eligible training provider certification system may be applied to the delivery of training services funded through the Commission including Choices, FS E&T, WtW, TAA and NAFTA-TAA.
- (b) Training services shall be directly linked with employment opportunities on the list of occupations in demand for the LWDA of the participant's residence or another area to which the participant is willing to relocate. In addition, each LWDB shall develop a process for considering requests from participants for training in occupations not on the demand list if sufficient and verifiable documentation is provided.
- (c) Training services shall be provided in such a manner as to maximize consumer choice in the selection of eligible providers.
- (d) Training services shall be provided through the use of individual training accounts except for those situations described in §841.35 of this title (relating to Training Services Which are Not Provided Through Individual Training Accounts).

§841.34. Individual Training Accounts

- (a) An ITA is an account established by a one-stop operator on behalf of an eligible adult or dislocated worker program participant and funded with WIA adult and dislocated worker funds. Participants may use ITAs for training services for skills in demand or allowed occupations as defined by the LWDB from training providers on the state-distributed list of approved eligible training providers.
- (b) At its discretion, a LWDB is authorized to approve a request for training for occupations not on the occupations in demand list, if sufficient and verifiable documentation is provided.

- (c) At the discretion of the Board, ITAs may be used as a payment mechanism for the delivery of training services funded through the Commission including Choices, FS E&T, WtW, TAA and NAFTA-TAA.

§841.38. Initial Certification Process for Exempt Providers

- (a) For purposes of this section, exempt providers are those providers exempt from having to submit performance data for their initial application as set forth in WIA §122.
- (b) Each LWDB shall develop local application requirements for initial certification for the following providers of training services when offering the programs described:
 - (1) a postsecondary educational institution that:
 - (A) is eligible to receive federal funds under Title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 *et seq.*), and
 - (B) provides a program that leads to an associate degree, baccalaureate degree, or certificate; or
 - (2) an entity that carries out programs under the Act of August 16, 1937, commonly known as the “National Apprenticeship Act,” 50 Stat. 664, chapter 663; (29 U.S.C. 50 *et seq.*).

§841.39. Initial Certification Process for Non-Exempt Providers

- (a) Non-exempt providers are those not defined as exempt under §841.38.
- (b) The following entities shall be eligible to receive WIA funds if they complete the provider certification process and are determined eligible for participation by a LWDB in the LWDA in which the provider desires to provide training services and the Commission:
 - (1) public or private providers of a program of training services, including faith-based providers which are not:
 - (A) postsecondary educational institutions that are eligible to receive federal funds under Title IV of the Higher Education Act of 1965 (20 U.S.C. §1070 *et seq.*), and provide programs that lead to an associate degree, baccalaureate degree or certificate; or
 - (B) entities that carry out programs under the Act of August 16, 1937, also known as the “National Apprenticeship Act,” 50 Stat. 664, chapter 663, (29 U.S.C. 50 *et seq.*);
 - (2) postsecondary educational institutions which seek to receive WIA funding for a program that does not lead to an associate degree, baccalaureate degree or certificate; and
 - (3) providers that carry out programs under the Act commonly known as the National Apprenticeship Act that seek to receive WIA funding for a program not covered by the National Apprenticeship Act.
- (c) All training provider applicants under this section shall provide the following information to the LWDB:
 - (1) the name, mailing address and physical address of the training facility;
 - (2) documentation of financial stability of the applicant, which may include audits or financial statements, unless the applicant is one of the following entities that are subject to

- regulatory or audit provisions of Texas or another state regarding financial stability: a public university, college, community or technical college;
- (3) the name of the program(s) of training services submitted for WIA funding;
 - (4) the total hours of instruction associated with each program of training services;
 - (5) the cost of each program of training services, including tuition, fees, books, and any required tools, uniforms, equipment, or supplies;
 - (6) a description of the skill set which will be acquired through each program of training services;
 - (7) a list of occupations determined by using a coding system specified by the Commission, in which these skill sets are of primary interest;
 - (8) if all of the occupations described in paragraph (7) of this subsection are not on the Occupations in Demand List provided by the LWDB, evidence from employers, in a format and meeting specification set by the LWDB, that demonstrates that the occupation is in demand;
 - (9) description of the class size, instructor/student ratio;
 - (10) information on whether the students in the course are eligible for Title IV of the Higher Education Act funding (Pell grant);
 - (11) an outline of the course or program curriculum, including criteria for successful completion;
 - (12) the qualifications of the training instructors;
 - (13) a description of any minimum entry level requirement (e.g. reading or math level, previous education requirements such as high school diploma or GED);
 - (14) description of equipment utilized in the course and equipment/student ratio; and
 - (15) any additional information that is required by the LWDB in the LWDA in which the training provider is located.
- (d) Training provider applicants who provide training on the date of application through a program for which they are seeking certification shall include in their application the following verifiable performance information, or appropriate portion of verifiable performance information, for the program(s) of training services:
- (1) the program completion rates for all individuals participating in the applicable program;
 - (2) the percentage of all individuals participating in the applicable program who obtained unsubsidized employment;
 - (3) the wages at placement in employment of all individuals participating in the applicable program; and
 - (4) a description of the methodology that will be utilized to collect and verify performance information.
- (e) Each LWDB shall annually establish minimum requirements for initial eligibility. Such requirements shall include consideration of the information required by §841.44(a) of this title (relating to Determination of Subsequent Eligibility). The LWDB shall provide to each

applicant the current levels of performance required by the Commission or levels of performance required by the LWDB if higher than those established by the Commission.

- (f) For purposes of confirming training provider initial eligibility application information, and as determined reasonable by LWDBs, on-site visits shall be made by LWDB staff or representatives to training provider program sites.

§841.40. Application Submission

- (a) Applications for initial eligibility determination shall be submitted to the LWDB in the LWDA in which the provider of training services desires to provide training. Applications will be accepted throughout the year.
- (b) Provider application submission and LWDB and Commission application review shall be conducted via the automated, Internet-based eligible training provider certification system.
- (c) Training provider applicants shall be in compliance with applicable state law, including Texas Education Code Chapter 132, related to Proprietary Schools.

§841.41. Initial Eligibility Determination

- (a) A LWDB shall provide a written notice of determination of acceptance or rejection of an initial application to an applying entity within ninety (90) calendar days of the receipt of the completed initial eligibility determination application.
- (b) LWDB policy shall determine the circumstances under which reconsideration of an application may be afforded to an entity whose initial application for provider certification was denied.

§841.43. Application for Subsequent Eligibility Determination

- (a) All training services providers, including training providers who were determined to be eligible under §841.38 and §841.39 of this chapter, shall annually, from date of certification, establish continuing eligibility to receive funds from WIA to provide training services.
- (b) Provider application submission and LWDB and Commission application review shall be conducted via the automated, Internet-based eligible training provider certification system.
- (c) Training provider applicants shall be in compliance with applicable state law, including Texas Education Code Chapter 132, related to Proprietary Schools.
- (d) If an application for subsequent eligibility determination is denied and later approved on appeal, the Agency may adjust the certification period to ensure that the certification period is one year in length.
- (e) Each training services provider shall provide verifiable program-specific performance information as required, and in a format and on a schedule determined by the Commission.
- (f) The Commission and the LWDB may accept program-specific performance information consistent with the requirements for eligibility under Title IV of the Higher Education Act of 1965 from the provider for purposes of enabling the provider to fulfill the applicable requirements of this section if the information is substantially similar to the information otherwise required.

§841.44. Determination of Subsequent Eligibility

- (a) Each Board shall annually establish minimum requirements for subsequent eligibility. In determining subsequent eligibility, Boards shall consider the following:
 - (1) the specific economic, geographic, and demographic factors in the local areas in which providers seeking eligibility are located;
 - (2) the characteristics of the populations served by providers seeking eligibility, including the demonstrated difficulties in serving such populations, where applicable;
 - (3) current and projected occupational demand within the local area;
 - (4) the performance of a provider of a program(s) of training services, including the extent to which the annual standards of performance established by the Board have been achieved;
 - (5) the program cost of training services;
 - (6) the involvement of employers in the establishment of skill requirements for the training program; and
 - (7) the feedback of employers who employ individuals who have recently completed WIA-funded training to verify that the training provided produced the expected skills.
- (b) No later than July 1, 2000, each Board shall ensure that training providers, in developing programs of training services and establishing performance criteria for successful course completion, use in descending order:
 - (1) skill standards recognized or conditionally recognized by the Texas Skill Standards Board;
 - (2) industry-endorsed skill standards; or
 - (3) skill requirements determined by employers.
- (c) Boards may require enhancements to programs or courses to meet local industry needs.
- (d) For programs of training services certified as initially eligible on or after July 1, 2000, a Board shall provide a written notice of determination of acceptance or rejection of a subsequent eligibility application to an applying entity within 30 calendar days of the receipt of the completed subsequent eligibility determination application.
- (e) Board policy shall determine the circumstances under which reconsideration may be afforded to an entity whose application for subsequent eligibility certification determination was denied.

§841.45. Standards of Performance

- (a) The Commission shall annually adopt performance standards for WIA-supported participants and for all individuals enrolled in the program of training services, as applicable.
- (b) Each LWDB shall adopt local performance standards within 30 calendar days of the Commission's annual publication of state performance standards. LWDB standards shall meet or exceed the standards adopted by the Commission.
- (c) Performance standards may be adjusted by the LWDB for local conditions.

§841.46. Verifiable Program-Specific Performance Information

- (a) Performance information submitted for a training services program, as a part of the subsequent eligibility determination process, shall be verifiable.
- (b) Participating training providers shall provide to the Commission the participant and employer information determined by the Commission to be necessary to utilize unemployment insurance wage records and employer-based, follow-up surveys to obtain performance information. The training providers shall submit the information in a form and format determined by the Commission.
- (c) Subject to approval by the Commission, alternate procedures may be used to collect and verify supplemental performance information in addition to those described in subsection (b) of this section. Approval or use of an alternate procedure shall not release the training provider from the obligation to provide the information required by subsection (b) of this section. Submission of supplemental performance data obtained through use of an alternate procedure must be in accordance with formats determined by the Commission.
- (d) An independent audit of any alternate methodology used shall be conducted on an annual basis by a certified public accountant for programs of training services in which 100 or more WIA-supported students are served within a twelve-month period. Programs that serve less than 100 WIA-supported students within a twelve-month period shall provide for an independent audit of the performance data collection methodology every two years. A copy of the report shall be made available to the LWDB and to the Commission within 30-days of the completion of the report.
- (e) The Commission may conduct performance verification throughout the year and may require training providers to submit additional information to resolve performance reporting anomalies or irregularities.
- (f) Providers of training services shall retain participant program records for a period of three years from the date the participant completes the program.

§841.47. Eligible Training Provider Lists

- (a) At least annually, the LWDB shall publish in a newspaper of general circulation in the LWDA an invitation to training providers to submit an application.
- (b) Each LWDB shall develop an eligible training provider list that includes the list of providers determined to be eligible to receive training funds as authorized under WIA and state rules.
- (c) The Commission shall publish the program, performance, and cost information of each program receiving eligibility certification.
- (d) The Commission may remove a provider from the list of eligible providers or restrict WIA funding eligibility if the Commission determines that:
 - (1) the provider does not meet the performance levels established by the Commission, or
 - (2) the training provider has committed fraud or has violated applicable state or federal law, including prohibitions against discrimination and requirements related to the Americans with Disabilities Act.
- (e) If the Commission, after consultation with an LWDB, determines that a provider, or an individual providing information on behalf of the provider, has intentionally supplied inaccurate

program performance information, the Commission shall terminate the eligibility of the provider to receive funds for training services for a period of not less than two years.

- (f) The Commission shall provide written notice of the removal of a provider from the list of eligible providers to both the LWDB and the training provider. The notice will include a description of the appeal process.

The repeal adopted under Texas Labor Code §301.061 and §302.002 provides the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The adopted repeal affects the Texas Labor Code, Title 4.

§841.40. Application Submission.

§841.43. Application for Subsequent Eligibility Determination.

§841.45. Standards of Performance.

§841.47. Certified Provider Lists.