

## TEXAS WORKFORCE COMMISSION LETTER

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| <b>ID/No:</b>     | WD 20-11     |
| <b>Date:</b>      | May 19, 2011 |
| <b>Keyword:</b>   | WIA          |
| <b>Effective:</b> | July 1, 2011 |

**To:** Local Workforce Development Board Executive Directors  
Commission Executive Offices  
Local Workforce Development Board ETP Contacts  
Integrated Service Area Managers



**From:** Laurence M. Jones, Director, Workforce Development Division

**Subject:** **Workforce Investment Act Eligible Training Providers: Performance Requirements for Initial Eligibility—Program Year 2011**

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### **PURPOSE:**

To provide Local Workforce Development Boards (Boards) with the following information on performance requirements for Workforce Investment Act (WIA) Eligible Training Providers (ETPs):

- Annual establishment of required minimum performance levels for initial eligibility determination of ETP program applications, to allow inclusion of training programs on the Statewide List of Eligible Training Providers (Statewide List).
- Requirements associated with Boards' annual adoption and ongoing use of local performance standards in initial eligibility determination of nonexempt ETP program applications.
- Criteria for accepting specified proxy performance data for ETP program applications from institutions with Certificates of Authorization or Authority from the Texas Higher Education Coordinating Board (THECB).
- Procedure for training providers to request assistance in documenting program performance for a given program application by matching with Texas unemployment insurance (UI) wage records.
- Linkage of the ETP Average Wage at Placement performance minimum in a given program application to the average statewide entry-level hourly wage for the occupations for which the program provides training, as collected by the Texas Workforce Commission's (Commission) Labor Market and Career Information (LMCI) department and reported through the Standardized Occupational Components for Research and Analysis of Trends in Employment System (SOCRATES).
- Requirements associated with monitoring performance of ETP programs on the Statewide List.

*Note:* The minimum performance requirements listed in this WD Letter are applicable effective July 1, 2011.

## **BACKGROUND:**

### **I. General Information**

- A. Issuance and Use of ETP Performance Minimums. Each year, ETP performance measure minimums are approved by the Commission as required by WIA §122 and the Commission's WIA rule §841.45. Once the Commission approves and publishes the state ETP performance minimums, Boards adopt performance standards that meet or exceed the Commission-established minimums.

ETP performance minimums are used to evaluate applications for training programs to be certified for the Statewide List. WIA funds can be used to train eligible WIA adult and dislocated workers in an ETP-certified training program.

ETP program applications are submitted and evaluated to determine initial ETP eligibility of specific training programs. A training provider can submit more than one training program for ETP certification consideration; each program will be exempt<sup>1</sup> or nonexempt regarding requirements for submitting ETP performance information. The requirement for ETP applications to submit performance information applies only to nonexempt training programs (see Section II) that are not new—i.e., that are already offered prior to the date of application. Nonexempt program applications must include performance information, and they must meet the established performance minimums to be certified.

- B. Subsequent Certification Waiver. The U.S. Department of Labor (DOL) extended WIA-certified training programs through June 30, 2012, without subsequent certification. Without a requirement for subsequent certification, performance minimums apply only to new program applications that are subject to performance reporting.
- C. Initial Eligibility Performance Measures. On May 10, 2011, the Commission adopted the following initial eligibility minimum performance requirements applicable to all nonexempt program applications and effective July 1, 2011:
- 60 percent Program Completion Rate;
  - 60 percent Entered Employment Rate; and
  - Average Hourly Wage at Placement that is not less than the federal minimum wage and is at least 80 percent of the average statewide entry-level hourly wage for the occupation(s) supported by the training program,

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<sup>1</sup>In this context, *exempt* has a different meaning than the Career Schools and Colleges regulation/licensure requirements exemption.

or, if occupation-specific data are not available, 80 percent of the average entry-level hourly wage for all occupations statewide. Additionally, the Commission approved Board flexibility for individual exception requests that are supported with local wage information.

- D. Federal Minimum Wage. The federal minimum wage is \$7.25 per hour.
- E. Data Source for Average Entry Level Wage at Placement. LMCI collects occupational wage data, updates it annually, and makes it available through SOCRATES. For initial ETP training program applications, the performance minimum for the Average Entry Level Wage at Placement is calculated with the assistance of the Commission's Eligible Training Provider System (ETPS) staff, using the most current SOCRATES data available. With a forthcoming new release of ETPS, the Average Entry Level Wage at Placement will be automatically displayed in the program application's performance area, based on occupations the provider selects in its program application.
- F. Commission Assistance in Documenting Performance. To assist training providers in documenting program performance for a given program, the Commission offers the UI Wage Match Service (for a fee) that matches against Texas's UI wage records. The performance data issued to a training provider by using this service is considered valid for use in applications for a program for a period not to exceed 180 calendar days after issuance of the report. Additional information on the Commission's UI Wage Match Service is posted in the *Certification Process* section (public view) of the ETP automated system (automated system). To access the automated system, go to <https://services.twc.state.tx.us/PROVIDERCERT/dispatcher>.
- G. Proxy Performance Information for Certain Higher Education Institutions. For institutions with Certificates of Authorization or Authority from THECB, the Commission will accept the proxy performance information specified below.

## **II. Initial Eligibility Determination**

- A. Training Program Types. Training programs are classified into three categories for purposes of initial eligibility application requirements:
  - 1. Exempt Training Programs: WIA extends automatic initial eligibility to certain training programs. A complete program application still must be submitted to the Board for an exempt program in order for it to be included on the Statewide List. However, performance information does not have to be submitted. Exempt training programs are those that meet one of the following two criteria:

- a. A training program that leads to an associate’s degree, baccalaureate degree, or certificate provided by a postsecondary educational institution that is eligible to receive federal funds under Title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.). For the purposes of initial eligibility determination, *certificate* is defined as “a document or other proof provided by an educational institution or other training provider awarded after successful completion of a course, sequence of courses, or program that is a minimum of 144 non-credit clock/contact hours or 9 credit hours in length” [see Commission rule §841.2(2)]. This definition applies only if the institution is currently eligible (i.e., at time of application submission) to receive federal funds under Title IV of the Higher Education Act of 1965.
  - b. An apprenticeship program registered by DOL’s Bureau of Apprenticeship and Training under the National Apprenticeship Act of August 16, 1937 (50 Stat. 664, Chapter 663, 29 U.S.C. 50 et seq.).
2. Nonexempt Training Programs: Under WIA, nonexempt training programs must apply to Boards for eligibility determination. Performance information must be submitted for programs that are not new—i.e., the applicant has offered the training program prior to the date of application. Nonexempt training programs include:
- a. training programs that do not lead to an associate’s degree, baccalaureate degree, or certificate provided by a postsecondary educational institution eligible to receive federal funds under Title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.);
  - b. training programs that are not registered by DOL’s Bureau of Apprenticeship and Training under the National Apprenticeship Act and are provided by an entity that carries out registered apprenticeship programs; and
  - c. all other training programs provided by public or private (for-profit or nonprofit) providers of training services.
3. Excluded Providers: On-the-job training, customized training, youth activities, or intensive services authorized under WIA are not subject to ETP requirements or the application process.
- B. State Requirements. The state is required to establish initial eligibility procedures for training providers’ programs, including the establishment of minimum performance levels.

Performance information that must be submitted for nonexempt training programs includes specific performance data, which meets required state and local performance minimums, and information about program inception, data collection, and reporting methodology.

### Initial Eligibility Performance Measures

**Participant Universe – ALL**—the training program’s student population for whom performance data must be calculated and submitted for the program in an ETP application.

Performance data must be submitted for the most recent, standard 12-month reporting period used by the training provider and specified in the ETP application for the program. Data for the specified period is submitted for the total number of participants:

- active during the period; and
- scheduled to complete the program during the same 12-month reporting period, regardless of initial enrollment date.

*Exception:* The following exception to the definition of *Participant Universe – ALL* applies to institutions that are currently eligible (i.e., as of the date of application submission) to receive Title IV funds and have Certificates of Authority or Authorization from THECB. These institutions, which may be regulated by THECB and/or the Commission’s Career Schools and Colleges department, must report degree and nondegree training program performance information to THECB.

THECB-reporting institutions must submit performance information for nonexempt programs, but are not required to submit performance information for exempt programs. The institution can voluntarily submit performance information, but Boards do not consider that information in determining initial eligibility.

When submitting performance information, THECB-reporting institutions can submit performance data for the *Participant Universe – ALL*. Alternatively, they can submit proxy information for the Graduate/Leaver universe used in their last standard 12-month reporting period, as reported to THECB. Details are provided in the online ETP application and documentation. If performance data is submitted for the THECB-defined Graduate/Leaver universe, institutions have the option of submitting supplemental data. Additional information on supplemental reporting options is posted in the *Certification Process* navigation option (public view) of the automated system.

| Initial Eligibility Performance Measures, continued   | State Minimum, Program Year 2011 |
|---|----------------------------------|
| <p><b>Program Completion Rate – ALL</b>—the program completion rate that must be calculated and submitted for the program in an ETP application.</p> <p>The program completion rate is defined as the percentage of those individuals in the <i>Participant Universe – ALL</i> who completed the program during the 12-month reporting period specified in the ETP application.</p> <p>As calculated by the training provider, the completion rate is the number of individuals who completed the program during the 12-month period specified in the ETP application <i>divided by</i> the number in the <i>Participant Universe – ALL</i> and <i>multiplied by</i> 100.</p> <p><i>Exception:</i> Institutions providing performance data for the Graduate/Leaver universe from their last standard 12-month reporting period must provide the number of graduates and number of leavers reported to THECB.</p>  | 60%                              |
| <p><b>Entered Employment Rate – ALL</b>—the entered employment rate that must be calculated and submitted for the program in an ETP application.</p> <p>The entered employment rate is defined as the percentage of those individuals in the <i>Participant Universe – ALL</i> who obtained or were engaged in unsubsidized employment during the 12-month reporting period specified in the ETP application. (Unsubsidized employment is employment performed for wages, salary, or pay that is not contingent on a subsidy such as on-the-job training reimbursements to the employer.)</p> <p>As calculated by the training provider, the entered employment rate is the number of program participants who obtained or were engaged in unsubsidized employment <i>divided by</i> the number in the <i>Participant Universe – ALL</i> and <i>multiplied by</i> 100.</p> <p><i>Note:</i> Institutions providing performance data for the Graduate/Leaver universe from their last standard 12-month reporting period, as reported to THECB, must use that data as the denominator in calculating their entered employment rate.</p> | 60%                              |

| Initial Eligibility Performance Measures, continued  | State Minimum,<br>Program Year 2011   |
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| <p><b>Average Hourly Wage at Placement – ALL</b>—the average hourly entry-level wage that must be calculated and submitted for the program in an ETP application.</p> <p>The average hourly wage is defined as the average hourly entry-level wage received by the program participants who obtained or were engaged in unsubsidized employment during the 12-month reporting period specified in the ETP application.</p> <p>As calculated by the training provider, the average hourly wage is <i>the sum of</i> the hourly entry-level wages of each program participant who obtained or was engaged in unsubsidized employment <i>divided by</i> the number of program participants who obtained and/or were engaged in unsubsidized employment.</p> | <p>Not less than the federal minimum wage</p> <p>AND</p> <p>at least 80% of the average statewide entry-level hourly wage for the occupation(s) specified on the ETP initial application, if these data are available for the occupation(s) specified, OR, if occupation-specific data are not available, 80% of the average entry-level hourly wage for all occupations statewide.</p> |

**PROCEDURES:**

Adoption and Use of Performance Requirements (Initial Eligibility Applications)

- A. Boards must adopt local ETP performance requirements<sup>2</sup> for Program Year 2011 (PY' 11), with an effective date of July 1, 2011.

NLF

***Within 14 calendar days of Board action, the Board must notify the Commission, using the notification form included as Attachment 1 to this WD Letter, of the adoption of local performance standards.***

NLF

<sup>2</sup>As required by Commission rule at 40 TAC §802.1(f) and as detailed in WD Letter 10-07, Board members must take such actions in an open meeting.

B. If action is not taken by July 1, 2011, Boards must be aware of the following: **NLF**

1. If a Board's previously adopted local performance standards exceed the July 1, 2011, state performance minimums, the previously adopted performance standards remain in effect until the Board takes action to change them.
2. If a Board's previously adopted local performance standards do not exceed the July 1, 2011, state performance minimums, the state performance minimums will apply until the Board adopts new performance standards and notifies the Commission.

C. When setting performance requirements for their local workforce development areas, Boards must adopt a percentage minimum that meets or exceeds the state performance minimum for each measure. (See the Initial Eligibility Performance Measures table in this WD Letter and Attachment 1.) **NLF**

D. Boards may adopt performance requirements higher than the state performance minimums for their performance measures. Boards also may incorporate additional performance factors appropriate to specific performance measures. **LF**

*Example:* A Board's Average Hourly Wage at Placement performance measure minimum may include a provision that a program's wage level cannot be less than the Board's designated self-sufficiency wage.

E. Boards must consult with the Workforce Development Division's WIA ETP Unit for assistance in calculating the appropriate occupation-specific average entry-level hourly wage minimum for a given ETP initial application. **NLF**

F. Boards may, in coordination with a training provider, submit to the WIA ETP Unit an exception request for an individual application that has an average entry-level wage that falls below the Board's adopted average entry-level wage for the occupation(s) specified in the application. **LF**

When submitting an exception request, Boards must include local wage information that supports the request. **NLF**

G. When using an Average Quarterly Wage at Placement performance measure in reviewing an ETP application, the Board must calculate the Average Quarterly Wage at Placement with the following formula: **NLF**

13 weeks x 30 hours x Average Hourly Wage at Placement

- H. It is recommended that Boards electing to modify local performance standards reconsider program applications that were denied on the basis of not meeting previous locally adopted performance standards. **LF**
- I. Boards must provide ETP applicants with information on Board-adopted performance measures. **NLF**
- J. Boards must maintain appropriate oversight and accountability of WIA-eligible certified programs and providers. **NLF**
- K. To promote continuous improvement of WIA training services and meet the needs of local employers and participants, it is recommended that Boards incorporate locally adopted minimum standards of performance into their training provider monitoring, continue training provider approval processes, and share monitoring information with customers to assist them in choosing a training provider. **LF**

**INQUIRIES:**

Direct inquiries to the ETP Help Desk at:

- [etp.helpdesk@twc.state.tx.us](mailto:etp.helpdesk@twc.state.tx.us)
- (866) 256-6333 [Toll-free]
- (512) 936-0669 [Local/Austin]

**ATTACHMENT:**

Attachment 1: Texas’s WIA Eligible Training Provider Certification System – Notification of Board Performance Requirements

**RESCISSIONS:**

WD Letter 23-10 (as of July 1, 2011)

**REFERENCES:**

- Workforce Investment Act §122
- Workforce Investment Act, Final Rule, Part 663, Subpart E
- Title IV, Higher Education Act of 1965; 20 U.S.C. 1070 et seq.
- National Apprenticeship Act, 50 Stat. 664, Chapter 663; 29 U.S.C. 50 et seq.
- U.S. Troop Readiness, Veterans’ Care, Katrina Recovery, and Iraq Accountability Appropriations Act of 2007 (Public Law 110-28)
- Texas Workforce Commission Integrity of the Texas Workforce System Rules: 40 TAC §802.1(f)
- Texas Workforce Commission Workforce Investment Act Rules: 40 TAC §§841.1–841.47
- Texas Higher Education Coordinating Board, Guidelines for Instructional Programs in Workforce Education (June 2010)
- WD Letter 10-07, issued February 2, 2007, and entitled “Adoption of Local Workforce Development Board Policies in Open Meetings”
- WD Letter 44-10, issued December 22, 2010, and entitled “Guidelines for Implementing Workforce Investment Act Waivers”

**FLEXIBILITY RATINGS:**

**No Local Flexibility (NLF):** This rating indicates that Boards must comply with the federal and state laws, rules, policies, and required procedures set forth in this WD Letter and have no local flexibility in determining whether and/or how to comply. All information with an NLF rating is indicated by “must” or “shall.”

**Local Flexibility (LF):** This rating indicates that Boards have local flexibility in determining whether and/or how to implement guidance or recommended practices set forth in this WD Letter. All information with an LF rating is indicated by “may” or “recommend.”